

MONTANA LEGISLATIVE HISTORY

Chapter 505 19 97

Bill H _____ S 390

Original bill & history ☒ c

H. Committee on Appropriations

Hearing Date(s) Apr 02 ☒ c

Apr 11 ☒ c

_____ ☐ c

_____ ☐ c

Date Out _____ ☐ c

S. Committee on Taxation

Hearing Date(s) Mar 13 ☒ c

Mar 21 ☒ c

_____ ☐ c

_____ ☐ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

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OF MONTANA

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

3/12 HEARING
 3/12 TABLED IN COMMITTEE
 4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
 DIED IN COMMITTEE

SB 389 INTRODUCED BY BAER, ET AL.

LC1079 DRAFTER: BOHYER

ESTABLISH TAX CREDITS TO OFFSET THE EFFECTS OF THE 1996
 REAPPRAISAL ON CERTAIN REAL PROPERTY AND IMPROVEMENTS

3/05	INTRODUCED		
3/05	FIRST READING		
3/05	REFERRED TO TAXATION		
3/05	FISCAL NOTE REQUESTED (EXTENSION GRANTED FOR COMPLETION)		
3/14	FISCAL NOTE RECEIVED		
3/15	FISCAL NOTE PRINTED		
3/17	HEARING		
3/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
4/02	2ND READING PASSED AS AMENDED	40	10
4/03	3RD READING PASSED	41	9
	TRANSMITTED TO HOUSE		
4/03	FIRST READING		
4/03	REFERRED TO TAXATION		
4/07	HEARING		
4/14	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/16	2ND READING CONCURRED	72	24
4/16	TAKEN FROM 3RD READING AND PLACED BACK ON 2ND READING		
4/16	2ND READING CONCUR MOTION FAILED	47	53
4/17	RECONSIDERED PREVIOUS ACTION	55	44
4/17	2ND READING CONCURRED AS AMENDED MOTION FAILED	46	54

SB 390 INTRODUCED BY THOMAS, ET AL.

LC0798 DRAFTER: EVERTS

ESTABLISH RESTRUCTURING REQUIREMENTS FOR MONTANA'S
 ELECTRIC UTILITY INDUSTRY

3/08	INTRODUCED		
3/08	FIRST READING		
3/08	REFERRED TO TAXATION		
3/08	FISCAL NOTE REQUESTED		
3/12	FISCAL NOTE RECEIVED		
3/12	FISCAL NOTE PRINTED		
3/13	HEARING		
3/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/25	2ND READING PASSED AS AMENDED	37	13
3/26	3RD READING PASSED	36	14
	TRANSMITTED TO HOUSE		
3/26	FIRST READING		
3/26	REFERRED TO APPROPRIATIONS		
4/07	HEARING		
4/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/15	2ND READING CONCURRED AS AMENDED	78	21
4/16	3RD READING CONCURRED	78	21
	RETURNED TO SENATE WITH AMENDMENTS		
4/17	2ND READING AMENDMENTS CONCURRED	49	0
4/18	3RD READING CONCURRED AS AMENDED	35	15
4/24	SIGNED BY PRESIDENT		
4/24	SIGNED BY SPEAKER		
4/24	TRANSMITTED TO GOVERNOR		

5/02 SIGNED BY GOVERNOR
CHAPTER NUMBER 505
EFFECTIVE DATE: 05/02/97

SB 391 INTRODUCED BY CHRISTIAENS, ET AL. LC0457 DRAFTER: MARTIN

PROVIDE AN INDIVIDUAL INCOME TAX CREDIT FOR QUALIFYING
POSTSECONDARY EDUCATION EXPENSES PAID BY AN INDIVIDUAL FOR
A DEPENDENT WHO IS A FULL-TIME STUDENT IN THE MONTANA
UNIVERSITY SYSTEM OR AT A MONTANA PRIVATE COLLEGE

3/10 INTRODUCED
3/10 FIRST READING
3/10 REFERRED TO TAXATION
3/10 FISCAL NOTE REQUESTED
3/14 FISCAL NOTE RECEIVED
3/14 FISCAL NOTE PRINTED
3/18 HEARING
3/20 TABLED IN COMMITTEE
4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
DIED IN COMMITTEE

SB 392 INTRODUCED BY CRIPPEN, ET AL. LC1384 DRAFTER: PETESCH

REVISE THE LAWS GOVERNING PROPERTY TAXES

3/10	INTRODUCED		
3/10	REFERRED TO TAXATION		
3/10	FISCAL NOTE REQUESTED		
3/11	FIRST READING		
3/14	HEARING		
3/14	FISCAL NOTE RECEIVED		
3/14	FISCAL NOTE PRINTED		
3/27	COMMITTEE REPORT—BILL PASSED AS AMENDED		
4/02	2ND READING PASSED AS AMENDED	28	21
4/03	3RD READING PASSED	33	17
	TRANSMITTED TO HOUSE		
4/03	FIRST READING		
4/03	REFERRED TO TAXATION		
4/07	HEARING		
	DIED IN COMMITTEE		

SB 393 INTRODUCED BY TAYLOR, ET AL. LC1385 DRAFTER: MARTIN

ESTABLISH A JOB GAINS TAX CREDIT

3/11	FISCAL NOTE REQUESTED		
3/12	INTRODUCED		
3/12	FIRST READING		
3/12	REFERRED TO TAXATION		
3/14	FISCAL NOTE RECEIVED		
3/15	FISCAL NOTE PRINTED		
3/18	HEARING		
3/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
4/02	2ND READING PASSED	50	0
4/03	3RD READING PASSED	47	3
	TRANSMITTED TO HOUSE		
4/03	FIRST READING		
4/03	REFERRED TO TAXATION		
4/07	HEARING		
4/09	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS
FOR MONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING
THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES
FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES
IN CLASS NINE PROPERTY; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104,
69-5-105, 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING
SECTION 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." *Rehber*

STATEMENT OF INTENT

A statement of intent is required because this bill provides the public service commission with rulemaking authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 31] may be cited as the "Electric Utility Industry Restructuring and Customer Choice Act".

NEW SECTION. **Section 2. Legislative findings and policy.** The legislature finds and declares the following:

- (1) The generation and sale of electricity is becoming a competitive industry.
- (2) Montana customers should have the freedom to choose their supplier of electricity and related services in a competitive market as soon as administratively feasible. Affording this opportunity serves the public interest.
- (3) The financial integrity of electrical utilities should be fostered.
- (4) The public interest requires the continued protection of consumers through:
 - (a) licensure of electricity suppliers;
 - (b) provision of information to consumers regarding electricity supply service;

- (c) provision of a process for investigating and resolving complaints;
- (d) continued funding for public purpose programs for:
- (i) cost-effective local energy conservation;
 - (ii) low-income customer weatherization;
 - (iii) renewable resource applications;
 - (iv) research and development programs related to energy conservation and renewables;
 - (v) market transformation; and
 - (vi) low-income energy bill assistance;
- (e) assurance of service reliability and quality; and
- (f) prevention of anticompetitive and abusive activities.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 31], unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers and purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust or financing vehicle, to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

- (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18;
- (b) an existing municipal utility as of [the effective date of this act]; or
- (c) a federally owned and locally managed electric utility in the state of Montana that is operated under contract between a federally recognized Indian tribe and the United States.

(6) "Customer" or "consumer" means a retail electric customer or consumer.

(7) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(8) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public.

(9) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers' offering to sell electricity to retail customers in the state of Montana.

(10) "Financing order" means an order of the commission adopted in accordance with [section 31] that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(12) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(13) "Local governing body" means a local board of trustees of a rural electric cooperative.

(14) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(15) "Nonbypassable rates or charges" means rates or charges approved by the commission imposed by a customer to pay the customer's share of transition costs or universal system benefits program

costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(16) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electric supply for all residential and commercial customers.

(17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

(18) "Transition bondholder" means a holder of transition bonds including trustees, collateral agents, and other entities acting for the benefit of that holder.

(19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(20) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(21) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(22) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of [sections 1 through 31] or of federal law requiring retail open access or customer choice.

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before [the effective date of this act];

(iv) the costs associated with any renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to [sections 1 through 31], during which utilities may phase in customer choice of electricity supplier.

(24) "Transition property" means the property right created by a financing order including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under [sections 1 through 31] or assignable pursuant to a financing order is only a contract right.

(25) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(26) "Transmission services provider" means a person controlling or operating transmission facilities.

(27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

(28) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource applications, including those that capture unique social and energy system benefits or provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs;

and

(f) low-income energy bill assistance as approved by the commission.

1 (29) "Utility" means any public utility or cooperative utility.

2
3 **NEW SECTION. Section 4. Pilot programs.** (1) Except as provided in [sections 5(4) and 20],
4 beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their
5 residential and small commercial customers. A report describing and analyzing the results of the pilot
6 programs must be submitted to the commission and the transition advisory committee established in
7 [section 29] on or before July 1, 2000.

8 (2) Utilities shall use pilot programs to gather necessary information to determine the most effective
9 and timely options for providing customer choice. Necessary information includes but is not limited to:

10 (a) the level of demand for electricity supply choice and the availability of market prices for smaller
11 customers;

12 (b) the best means to encourage and support the development of sufficient markets and bargaining
13 power for the benefit of smaller customers;

14 (c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing
15 service to smaller customers; and

16 (d) experience in the broad range of technical and administrative support matters involved in
17 designing and delivering unbundled retail services to smaller customers.

18
19 **NEW SECTION. Section 5. Public utility -- transition to customer choice -- waiver.** (1) A public
20 utility shall, except as provided in this section, adhere to the following deadlines:

21 (a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and
22 for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate
23 to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

24 (b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002,
25 all other public utility customers must have the opportunity to choose an electricity supplier.

26 (2) (a) Except as provided for in subsection (3), the commission may determine that additional time
27 is necessary for customers identified in subsection (1)(b); however, the implementation of full customer
28 choice may not be delayed beyond July 1, 2004.

29 (b) A determination by the commission that additional time is necessary for subsection (1)(b)
30 customers must be made at least 60 days in advance of the scheduled date and must be based on one of

more of the following considerations:

- (i) implementation would not be administratively feasible;
- (ii) implementation would materially affect the reliability of the electric system; or
- (iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) Except as provided in [section 22], a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River may:

(a) defer compliance with this section until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory except that the public utility shall file a transition plan pursuant to [section 6] to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

(4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of [sections 4, 22, and this section].

NEW SECTION. **Section 6. Public utility -- transition plans.** (1) All public utilities, pursuant to [sections 1 through 31], shall submit a transition plan to the commission. Plans must be filed with the commission not later than 1 year before the date by which any customers of the public utility are entitled to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public utilities that are required to file plans. The transition plan must demonstrate that the public utility meets all the requirements of [sections 1 through 31].

(2) The commission shall develop a procedural schedule that includes:

(a) a preliminary transition plan determination including the commission's findings on whether the plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

(b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

(3) Unless waived by the public utility, the commission shall issue a final order approving or denying the transition plan before 9 months after the date a public utility files a plan. All parties are afforded an opportunity for hearing before issuance of the final order.

(4) The commission shall process a request for approval of a transition plan pursuant to the

1 contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

2 (5) On approval of the plan, the commission shall enforce the public utility obligations as
3 incorporated in the plan and in the commission's final order.

4
5 **NEW SECTION. Section 7. Public utility -- customer choice -- continued service -- education of**
6 **customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines
7 established in [section 5]. Public utilities shall propose a method for customers to choose an electricity
8 supplier.

9 (2) If a customer has not chosen an electricity supplier by the end of the transition period, a public
10 utility shall propose a method in the public utility's transition plans for assigning that customer to an
11 electricity supplier.

12 (3) A public utility may phase in customer choice to promote the orderly transition to a competitive
13 market environment pursuant to the deadlines in [section 5].

14 (4) Public utilities shall educate their customers about customer choice so that customers may make
15 an informed choice of an electricity supplier. This education process must give special emphasis to
16 education efforts during the transition period.

17
18 **NEW SECTION. Section 8. Public utility -- functional separation, divestiture, and nondiscrimination.**

19 (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the
20 public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail
21 energy services operations in the state of Montana, upon application to and approval from the commission.

22 (2) The commission may not order a public utility to divest itself of any generation assets or prohibit
23 a public utility from divesting itself voluntarily of any generation assets.

24 (3) Public utilities shall:

25 (a) prevent undue discrimination in favor of their own power supply, other services, divisions, or
26 affiliates, if any;

27 (b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to
28 customers; and

29 (c) grant customers and their electricity suppliers access to the public utility's retail transmission
30 and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable

1 to the use of the retail transmission and distribution system by the public utility and the public utility's
2 affiliates.

3 (4) The provisions of this section are satisfied if the public utility adopts and complies with federal
4 energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. The commission
5 shall promulgate rules relating to the codes of conduct.

6
7 **NEW SECTION. Section 9. Public utility -- distribution services.** (1) A public utility's distribution
8 services provider shall:

9 (a) file tariffs that make distribution facilities available to all electricity suppliers, transmission
10 services providers, and customers on a nondiscriminatory and comparable basis;

11 (b) build and maintain distribution facilities; and

12 (c) be an emergency supplier of electricity and related services.

13 (2) When a distribution services provider acts as an emergency supplier of electricity and related
14 services to customers, the electricity supplier that should have provided the electricity shall reimburse the
15 distribution services provider at the higher of a multiple of the cost or a multiple of the then existing market
16 rate for that electricity. The commission shall determine and authorize the multiple used. The market rate
17 is the highest published rate for electricity purchased within the local load control area at the time that the
18 distribution services provider provided the emergency supply. A distribution services provider is not
19 required to purchase any reserve supply of electricity to fulfill this obligation.

20
21 **NEW SECTION. Section 10. Public utilities -- transmission services.** For transmission services
22 regulated by the commission, public utilities, through filed tariffs, shall make transmission services available
23 for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and
24 by customers.

25
26 **NEW SECTION. Section 11. Public utilities -- electricity supply.** (1) On the effective date of a
27 commission order implementing a public utility's transition plan pursuant to [section 6], the public utility
28 shall remove its generation assets from the rate base.

29 (2) During the transition period, the commission may establish cost-based prices for electricity
30 supply service for customers that do not have a choice of electricity supply service or that have not yet

1 chosen an electricity supplier.

2 (3) If the transition period is extended for certain customers, then the customers' distribution
3 services provider shall:

4 (a) extend any cost-based contract with the distribution services provider's affiliate supplier for a
5 term not more than 3 years; or

6 (b) purchase electricity from the market.

7 (4) A tracking mechanism must be used to recover electricity supply costs in rates to ensure that
8 those costs are fully recovered.

9 (5) If a public utility intends to be an electricity supplier through an unregulated division, then the
10 public utility must be licensed as an electricity supplier pursuant to [section 24].

11
12 **NEW SECTION. Section 12. Public utilities -- transition costs and charges -- rate moratorium.** (1)

13 Subject to the provisions of this section, the commission shall allow recovery of the following categories
14 of transition costs:

15 (a) the unmitigable costs of qualifying facility contracts, including any buyout or buydown costs,
16 for which the contract price of generation is above the market price for generation;

17 (b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist
18 because of current regulatory practices and that can be accounted for up to the effective date of the
19 commission's final order regarding a public utility's transition plan, including costs, expenses, and
20 reasonable fees related to issuing of transition bonds;

21 (c) The unmitigable transition costs related to public utility-owned generation and other power
22 purchase contracts, except that recovery of those costs is limited to the amount accruing during the first
23 4 years after the commission enters an order pursuant to [section 6(3)]; and

24 (d) other transition costs as may qualify for recovery under this section.

25 (2) Transition costs as determined by the commission upon an affirmative showing by a public utility
26 must meet the following requirements:

27 (a) Transition costs must reflect all reasonable mitigation by the public utility, including but not
28 limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing
29 through transition bonds.

30 (b) The value of all generation-related assets and liabilities and electricity supply costs must be

1 reasonably demonstrable and must be considered on a net basis, and methods for determining value must
2 include but are not limited to:

- 3 (i) estimating future market values of electricity and ancillary services provided by the assets;
- 4 (ii) appraisal by independent third-party professions; and
- 5 (iii) a competitive bid sale.

6 (c) Investments and power purchase contracts must have been previously allowed in rates or, if not
7 previously in rates, must be determined to be prudent or used and useful to ratepayers in connection with
8 the commission's approval of the utility's transition plan.

9 (d) Unless otherwise provided for in [sections 1 through 31], only costs related to existing
10 investments and power purchase contracts identified in subsection (2)(c) and costs arising from those
11 investments and power purchase contracts may be included as transition costs.

12 (3) (a) On commission approval of the amount of a public utility's transition costs, those costs
13 must be recovered through the imposition of a transition charge.

14 (b) A transition charge may not be collected from:

15 (i) customers with new loads of 1,000 kilowatts or greater that were connected to either the public
16 utility's transmission or distribution facilities after December 31, 1996; or

17 (ii) customers generating electricity for their own use.

18 (c) Subject to commission approval, a utility and a customer may agree to alter the customer's
19 transition charge payment schedule. Transition charges are the only charges that may be imposed upon
20 a customer class to recover transition costs under this section. A separate exit fee may not be charged.

21 (4) Transition charges must be imposed within a transition cost recovery period approved by the
22 commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c),
23 categories of transition costs may have varying transition cost recovery periods.

24 (5) Approval of transition costs and collection of those transition costs through transition charges
25 is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition
26 costs through any means not authorized by [sections 1 through 31] may not collect transition charges with
27 respect to these transition costs.

28 (6) Public utilities may not charge rates or collect costs, which include costs reallocated to transition
29 costs, at a level higher than the public utility would reasonably expect to recover in rates had the current
30 regulatory system remained intact, with the exception of:

1 (a) increased costs related to universal system benefits charges greater than those currently
2 included in rates; and

3 (b) increased costs necessary to implement full customer choice, including but not limited to
4 metering, billing, and technology from those customers on whose behalf those increased costs are incurred.

5 (7) If transition bonds are authorized pursuant to [section 31], any savings, net of consolidated tax
6 impacts, must be used to fund a partial or full rate moratorium for 2 years during the transition period
7 except as provided in [section 6], to the extent possible to fund transition costs mitigation or shortened
8 transition cost recovery periods.

9 (8) A public utility shall address in the public utility's transition plan reasonable transition
10 bond-related rate moratorium and transition costs adjustment opportunities that may exist for the benefit
11 of customers. The transition plan may include proposed provisions for rate adjustments due to
12 extraordinary events during the same time period.

13 (9) The commission shall issue the accounting orders necessary to align rate moratorium timing and
14 requirements to actual transition bonds savings.

15 (10) If transition bonds are issued, cost savings associated with and resulting from the bonds must
16 benefit customers.

17
18 **NEW SECTION. Section 13. Cooperative utility -- transition plan for customer choice.** (1) Except
19 as provided in [section 20], on or before July 1, 2001, the local governing body of a cooperative utility shall
20 adopt a transition plan.

21 (2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that
22 may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have
23 the opportunity to choose an electricity supplier.

24 (b) If after a pilot program for customers of a cooperative utility with loads less than 1,000
25 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not
26 developed, then the transition plan may be altered by the cooperative utility's governing body for those
27 customers.

28 (3) [Sections 1 through 31] do not require the cooperative utility to divest itself of any generation,
29 transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those
30 assets.

(4) A cooperative utility's local governing body shall certify to the commission that the local governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative utility shall provide to the commission documentation that the cooperative utility's transition plan is consistent with [sections 1 through 31].

NEW SECTION. Section 14. Cooperative utility -- customer choice -- education of customers -- continued service. (1) Except as provided in [section 20], cooperative utilities shall propose a method for cooperative utility customers to choose an electricity supplier.

(2) Customer choice may be phased in to promote the orderly transition to a competitive market environment.

(3) Cooperative utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period.

(4) If a cooperative utility customer has not chosen an electricity supplier by the end of the transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity supplier designated by the cooperative utility.

NEW SECTION. Section 15. Cooperative utility -- functional separation. (1) To the extent that a cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets and operations in the state of Montana. If the cooperative utility intends to exercise this option, the cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

(2) A cooperative utility shall describe in the transition plan measures taken by the cooperative utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and in favor of the cooperative utility's affiliates, if any.

(3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory commission's code of conduct established in 18 CFR, part 37.

NEW SECTION. Section 16. Cooperative utility -- distribution services. (1) A cooperative utility transition plan must include distribution facility tariffs that must be established by the cooperative utility's

1 local governing body and must include the obligation for the cooperative utility to:

2 (a) make distribution services available to all electricity suppliers, transmission services providers,
3 and customers on a nondiscriminatory and comparable basis;

4 (b) build and maintain distribution facilities; and

5 (c) be an emergency supplier of electricity and related services.

6 (2) If a distribution services provider acts as an emergency supplier of electricity and related
7 services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual
8 obligations shall reimburse the distribution services provider at an amount to be set by the local governing
9 body but may not exceed the higher of a multiple of the cost or a multiple of the then existing market rate
10 for that electricity. The market rate is the highest published rate for electricity purchased within the local
11 load control area at the time that the distribution services provider provided the emergency supply. A
12 distribution services provider is not required to purchase any reserve supply of electricity to fulfill this
13 obligation.

14 (3) Recoverable costs for cooperative utilities must be based upon standard financial reporting
15 statements and may reflect comparable rates of return of other utilities.

16
17 **NEW SECTION. Section 17. Cooperative utility -- transmission services.** Transition plans must
18 state whether the cooperative utility's transmission services, if any, are regulated by the federal energy
19 regulatory commission. If those services are not regulated by the federal energy regulatory commission,
20 the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers,
21 distribution services providers, and customers. A cooperative utility's local governing body shall establish
22 the cooperative utility's transmission tariffs.

23
24 **NEW SECTION. Section 18. Cooperative utility -- electricity supply.** (1) A transition plan may
25 provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer
26 electricity supply service. The local governing body shall establish the price for electricity supply service
27 offered by a cooperative utility.

28 (2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions
29 of [section 24].

30 (3) If a cooperative utility offers electricity supply service competitively to customers using a public

1 utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar
2 structure to serve those customers that allows the entity to be taxed at the same level as other for-profit
3 electricity suppliers.

4
5 **NEW SECTION. Section 19. Cooperative utility -- transition costs and charges.** (1) For the
6 purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative
7 utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may
8 not be recoverable as a result of the transition to a competitive market for electricity supply service.

9 (2) Transition costs eligible for treatment include but are not limited to:

10 (a) regulatory assets and deferred charges typically recoverable in rates;

11 (b) nonutility and utility power purchase contracts;

12 (c) existing commitments or obligations incurred before [the effective date of this act] and other
13 cooperative utility investments rendered uneconomic as a result of the implementation of [sections 1
14 through 31] or the introduction of retail wheeling through federal legislation or regulation;

15 (d) costs associated with any renegotiation or buyout of the existing nonutility and utility power
16 purchase contracts; and

17 (e) revenue that appears as a portion of a facility charge necessary to meet debt service
18 requirements.

19 (3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall
20 make reasonable efforts to mitigate those transition costs.

21 (4) Cooperative utilities may not collect any more costs, including costs reallocated to transition
22 costs, at a level higher than would otherwise be anticipated had the current regulatory system remained
23 intact, with the exception of:

24 (a) increased costs related to universal system benefits charges; and

25 (b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.

26 (5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover
27 transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable
28 and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution
29 facilities in the receipt of electricity supply services.

30 (6) A cooperative utility may not collect transition costs from a customer for which the cooperative

utility does not have and never has had an obligation to incur costs to provide electricity supply service unless the unmitigated transition costs were incurred solely on behalf of the customer.

(7) Approval of and collection of transition costs through a transition charge is a settlement of all transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through any other means may not collect transition charges.

NEW SECTION. Section 20. Cooperative utility -- exemption. (1) Within 1 year after [the effective date of this act], a cooperative utility may file a notice with the commission that the cooperative utility does not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant to [section 22], a cooperative utility filing notice under this section is exempt from the provisions and requirements of [sections 1 through 31].

(2) A cooperative utility filing a notice under this section:

(a) may elect later to adopt a transition plan in accordance with [sections 1 through 31]; and

(b) may not use a public utility's distribution facilities.

NEW SECTION. Section 21. Maintaining safety and reliability. Utilities shall maintain standards of safety and reliability of the electric delivery system and existing customer service requirements.

NEW SECTION. Section 22. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of energy conservation, renewable resource applications, and low-income energy bill assistance during the transition period and into the future.

(2) On or after January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal system benefits programs. Unless modified as provided in subsection (12), this funding level remains in effect until July 1, 2003.

(3) The recovery of all universal system benefits programs costs imposed pursuant to this section, is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(4) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs and for customers' programs or activities as provided in subsection (12).

(5) If a utility's or a customer's credit for internal activities do not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment for any difference.

(6) Cooperative utilities may pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs or low-income energy bill assistance.

(7) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(8) A utility's annual funding requirement for low-income energy bill assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(9) A utility must receive credit toward the utility's low-income energy bill assistance annual funding requirement for the utility's internal low-income energy bill assistance programs or activities.

(10) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference.

(11) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(12) A customer with loads greater than 1,000 kilowatts shall:

(a) pay the lesser of:

(i) \$500,000 net of the customer credits provided for in this subsection (12); or

(ii) the product of .9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases, net of customer credits provided for in this subsection (12);

(b) receive credit toward that customer's annual universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits program expenditure and these internal expenditures must include but not be limited to:

(i) expenditures that result in a reduction in the consumption of electrical energy in the customer's facility; and

1 (ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the
2 acquisition or support of renewable energy or conservation-related activities; and

3 (c) customers making these expenditures must receive a credit against the customer's annual
4 universal system benefits charge, except that any of those amounts expended in a calendar year that
5 exceed that customer's universal system benefits charge for the calendar year must be used as a credit
6 against those charges in future years until the total amount of those expenditures has been credited against
7 that customer's universal system benefits charges.

8 (13) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive
9 electricity supply market, including the consideration of the existence of universal system benefits programs
10 and the comparable level of funding for those programs throughout the regions neighboring Montana.

11 (14) A public utility shall prepare and submit an annual summary report of the public utility's
12 activities relating to all universal system benefits programs to the commission and the transition advisory
13 committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary
14 reports of activities to the cooperative utility's respective local governing body, the statewide cooperative
15 utility office, and the transition advisory committee. The annual report must include, but is not limited to:

16 (a) the types of internal utility and customer programs being used to satisfy the provisions of
17 [sections 1 through 31];

18 (b) the level of funding for those programs relative to the annual funding requirements prescribed
19 in subsection (2); and

20 (c) any payments made to the statewide funds in the event that internal funding was below the
21 prescribed annual funding requirements.

22
23 **NEW SECTION. Section 23. Commission authority -- rulemaking authority.** (1) Beginning on the
24 effective date of a commission order regarding a public utility's transition plan, the commission shall
25 regulate the public utility's retail transmission and distribution services within the state of Montana, as
26 provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity
27 supply may be procured during the transition period by the distribution function of a public utility for those
28 customers that do not have a choice of electricity supplier or for those customers that have not yet been
29 assigned an electricity supplier. During the transition period, those procurements may include a cost-based
30 contract from a supply affiliate or an unregulated division.

(2) If the transition period is extended for certain customers because workable competition in the electricity supply market does not exist, then the commission shall regulate distribution services providers in accordance with [section 9].

(3) The commission shall decide if there is workable competition in the electricity supply market by determining whether sufficient price elasticity of demand exists in the electricity supply market to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to [section 24].

(5) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety and reliability.

(6) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with [sections 1 through 31], and on the public utility's transition plan.

(7) The commission shall certify that a cooperative utility has adopted a transition plan that complies with [sections 1 through 31]. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(8) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(9) In addition to promulgating rules expressly provided for in [sections 1 through 31], the commission may promulgate any other rules necessary to carry out the provision of [sections 1 through 31].

(10) [Sections 1 through 31] do not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with [sections 1 through 31]; or

(b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1 through 31].

1 **NEW SECTION. Section 24. Licensing.** (1) Except as provided in [section 20], an electricity
2 supplier shall file an application with and obtain a license from the commission before offering electricity
3 for sale to retail customers in the state of Montana.

4 (2) As a condition of licensing, an electricity supplier shall identify and describe its business
5 activities and purposes and the business purposes of each of the electricity supplier's affiliates, including
6 whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair,
7 and nondiscriminatory access to the electricity supplier or the electricity supplier's affiliate's distribution
8 facilities.

9 (3) The commission may require electricity suppliers that provide electricity supply service to small
10 customers to make a standard service offer that ensures that those customers have access to affordable
11 electricity.

12 (4) The commission may require:

13 (a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to
14 obtain those reserves; and

15 (b) a licensee to post a bond if an electricity supplier fails to supply electricity or is not operating.

16 (5) An electricity supplier shall provide the commission and all distribution services providers with
17 copies of all license applications pursuant to subsection (2). Licensees shall update information and file
18 annual reports with the commission and all distribution services providers.

19 (6) License applications are effective 30 days after filing with the commission, unless the
20 commission rejects the application during that period. If the commission rejects a license application, the
21 commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome
22 deficiencies.

23 (7) Notwithstanding [sections 1 through 31], a cooperative utility is not required to apply for a
24 license from the commission to be an electricity supplier to customers normally served by that cooperative
25 utility in its traditional service territory or to any customers normally served by another cooperative utility
26 subject to the consent of the other cooperative utility's local governing body.

27
28 **NEW SECTION. Section 25. Penalties -- license revocation.** (1) The commission may begin a
29 proceeding to either impose a penalty or revoke or suspend a license of an electricity supplier for just cause
30 on the commission's own investigation or upon the complaint of an affected party if it is established that

the electricity supplier:

(a) intentionally provided false information to the commission;

(b) switched, or cause to be switched, the electricity supply for a customer without first obtaining the customer's written permission; or

(c) failed to provide a reasonably adequate supply of electricity for its customers in Montana.

(2) Any person selling or offering to sell electricity in this state in violation of [sections 24, 27,] and this section is subject to a fine of not less than \$100 or more than \$1,000 for the violation or a license revocation or suspension.

(3) The fine must be recovered in a civil action upon the complaint by the commission in any court of competent jurisdiction.

(4) A license revocation proceeding under this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

NEW SECTION. Section 26. Bill information -- customer nonpayment -- commission rulemaking.

(1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules promulgated by the commission. The electrical bill must disclose but is not limited to the following:

(a) distribution and transmission charges;

(b) electricity supply charges;

(c) competitive transition charges; and

(d) universal system benefits charges.

(2) The commission shall promulgate rules establishing the procedures relating to how and when an electricity supplier may discontinue service to a customer because of the customer's nonpayment and the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that are cooperative utilities.

(3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities regarding:

(a) customer nonpayment and reconnection; and

(b) information contained in electrical bills to consumers.

NEW SECTION. Section 27. Unauthorized switching -- commission rulemaking. (1) An electricity

1 supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity
2 supplier for a customer without first obtaining the customer's written permission.

3 (2) The commission shall promulgate rules establishing procedures to prevent unauthorized
4 switching.

5
6 NEW SECTION. Section 28. Reciprocity. (1) Except as provided in [section 20], all electricity
7 suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable
8 opportunity to compete.

9 (2) A distribution services provider or the distribution services provider's affiliates may not use
10 another distribution services provider's facilities in the state of Montana to sell electricity to customers in
11 the state of Montana unless the first distribution services provider or the distribution services provider's
12 affiliates offers comparable and nondiscriminatory access to the distribution services provider's distribution
13 facilities.

14
15 NEW SECTION. Section 29. Transition advisory committee. (1) A transition advisory committee
16 on electric utility industry restructuring is created. The transition advisory committee is composed of 18
17 members who are appointed as follows:

18 (a) The speaker of the house shall appoint two members from the house of representatives.

19 (b) The president of the senate shall appoint two members from the senate.

20 (c) The director of the department of environmental quality shall appoint one department
21 representative.

22 (d) The legislative consumer council shall appoint one representative.

23 (e) Two representatives of the cooperative utility industry are appointed as designated by the
24 Montana electrical cooperative association.

25 (f) Two representatives selected by the public utilities in the state of Montana are appointed.

26 (g) One representative of the commission is appointed.

27 (h) The governor shall appoint the following committee members:

28 (i) one representative from the industrial community with an interest in the restructuring of the
29 electric utility industry;

30 (ii) one representative from the nonindustrial retail electric consumer sector;

1 (iii) one representative from organized labor;

2 (iv) one representative from the community comprising environmental and conservation interests;

3 (v) one representative of low-income consumers;

4 (vi) one representative of Montana's Indian tribes; and

5 (vii) one representative of the electric power market industry.

6 (2) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

7 (3) Legislative members are entitled to salary and expenses as provided in section 5-2-302. Other
8 members serve without salary and without reimbursement of expenses.

9 (4) The public service commission, legislative services division, and appropriate state agencies shall
10 provide staff assistance as requested by the committee.

11 (5) Transition advisory committee members must be appointed within 60 days of [the effective date
12 of this act] to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years
13 expiring on January 1 of odd-numbered years.

14 (6) The governor shall appoint a transition advisory committee presiding officer.

15 (7) The transition advisory committee on electric utility industry restructuring must dissolve on the
16 earlier of either the date that full transition to retail competition is completed or December 31, 2004.

17 (8) The transition advisory committee shall provide an annual report on the status of electric utility
18 restructuring on or before November 1 to the governor, the speaker of the house, the president of the
19 senate and the commission.

20 (9) The transition advisory committee shall meet quarterly or as often as is necessary to conduct
21 its business.

22 (10) The transition advisory committee shall analyze and report on the transition to effective
23 competition in the competitive electricity supply market. The annual report made in the year 2000 must
24 evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include
25 legislative recommendations, if it appears appropriate, about the best means to further encourage the
26 development of customer choice and meaningful market access for the benefit of smaller customers. The
27 annual report for the year 2000 must also address the need, if any, for additional consumer protection
28 including protection from abusive or anticompetitive practices.

29 (11) The criteria that the transition advisory committee must use to evaluate effective competition
30 in the electricity supply market include but are not limited to the following:

1 (a) the level of demand for power supply choice and the availability of market prices for smaller
2 customers;

3 (b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and
4 the best means to encourage and support the development of sufficient markets;

5 (c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to
6 serve smaller customers; and

7 (d) the existence of the requisite technical and administrative support that enables smaller
8 customers to have choice of electricity supply.

9 (12) The transition advisory committee shall recommend legislation if necessary to promote electric
10 utility restructuring and retail choice of electricity suppliers.

11 (13) The transition advisory committee shall make recommendations to the governor, regarding the
12 implementation of statewide universal system benefits and universal energy bill assistance funds, in time
13 to allow for those funds to be created on or before January 1, 1999. This may include recommendations
14 regarding the assignment of an existing government agency or private nonprofit entity as the fund
15 administrator and administration guidelines for the funds including the means by which funds may be made
16 available for use.

17 (14) The transition advisory committee shall monitor and evaluate the universal system benefits
18 programs and comparable levels of funding for the region and make recommendations to the 58th
19 legislature to adjust the funding level provided for in [section 22] to coincide with the related activities of
20 the region at that time.

21 (15) On or before July 1, 2002, the transition advisory committee, in coordination with the
22 commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and
23 annual funding requirements and shall make recommendations to the 58th legislature regarding the future
24 need for those programs. The determination must focus specifically on the existence of markets to provide
25 for any or all of the universal system benefits programs or whether other means for funding those programs
26 have developed. These recommendations may also address how future reevaluations will be provided for,
27 if necessary.

28 (16) On or before November 1, 2001, the transition advisory committee shall collect information
29 to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers
30 outside of the state of Montana comparable to the opportunity provided pursuant to [sections 1 through

31] to utilities or their affiliates located outside the state of Montana. That information must be included in the report to the 58th legislature.

NEW SECTION. Section 30. Tax revenue analysis. (1) The revenue oversight committee, as provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously regulated electricity suppliers that will enter the competitive market and report to the legislature annually on how revenue to the state or local government is changed by restructuring and competition.

(2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative changes, if any, to address the establishment of comparable state and local taxation burdens on all market participants in the supply of electricity. Any legislation recommended by the revenue oversight committee should place comparable state and local taxation burdens upon all market participants.

NEW SECTION. Section 31. Transition costs financing. (1) A utility may, after July 1, 1997, apply to the commission for a determination that certain transition costs may be recovered through the issuance of transition bonds. After the issuance of a financing order, the utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition property or to cause the transition bonds to be issued, including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance.

(2) (a) The commission may issue financing orders in accordance with this section to facilitate the recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property. A financing order may be adopted only upon the application of a utility and may only become effective in accordance with its terms after the utility files with the commission the utility's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a customer are allocated between fixed transition amounts and other charges.

(b) A financing order must include, without limitation, a procedure for the expeditious approval by the commission of periodic adjustments to fixed transition amounts included in the order to ensure recovery of all transition costs and the costs of capital associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. These adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

1 (3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section
2 with respect to transition property that has been made the basis for the issuance of transition bonds, the
3 financing orders and the fixed transition amounts must be irrevocable.

4 (b) The commission may not by rescinding, altering, or amending the financing order or otherwise;

5 (i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering,
6 reimbursing, financing, or refinancing the transition costs and acquiring transition property;

7 (ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

8 (iii) in any way reduce or impair the value of transition property either directly or indirectly by taking
9 fixed transition amounts into account when setting other rates for the utility.

10 (c) The amount of revenue arising with respect to the transition property may not be subject to
11 reduction, impairment, postponement, or termination.

12 (d) Except as otherwise provided in this section, the state pledges and agrees with the assignees
13 and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed
14 transition amounts, transition property, financing orders, or any right under the obligations until the
15 obligations, together with the interest on the obligations are fully met and discharged.

16 (e) Notwithstanding any other provision of this section, the commission shall approve those
17 adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition
18 costs that are the subject of the pertinent financing order and the costs of capital associated with the
19 recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property
20 including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing
21 order. The adjustments may not impose fixed transition amounts upon customer classes that were not
22 subject to the fixed transition amounts in the pertinent financing order.

23 (4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision
24 of the state if issued through the board and do not constitute a pledge of the full faith and credit of the
25 state or any of the state's political subdivisions if issued through the board. The financing orders are
26 payable solely from the funds provided under this section. The bonds and offering documents must contain
27 a statement to the following effect:

28 "Neither the full faith and credit nor the taxing power of the State of Montana is pledged to the
29 payment of the principal of or interest on this security."

30 (b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate

1 the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any
2 appropriation for bond payment.

3 (5) The commission shall establish procedures for the expeditious processing of applications for
4 financing orders, including the approval or disapproval of applications within 120 days after a utility submits
5 a complete application. The commission shall provide in any financing order for a procedure for the
6 expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are
7 the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine
8 on each anniversary of the issuance of the financing order and at additional intervals as may be provided
9 for in the financing order whether the adjustments are required and shall provide for the adjustments, if
10 required, to be approved within 60 days of each anniversary of the issuance of the financing order or of
11 each additional interval provided for in the financing order.

12 (6) Fixed transition amounts become transition property when and to the extent that a financing
13 order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and
14 the transition property must thereafter continuously exist as property for all purposes with all of the rights
15 and privileges of [sections 1 through 31] for the period and to the extent provided in the financing order
16 or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages
17 on the transition bonds.

18 (7) Transition bonds may be issued upon commission approval in the pertinent financing order.
19 Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility,
20 other than the transition property as specified in the pertinent financing order.

21 (8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition
22 property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest
23 in that transition property to one or more assignees in connection with the issuance of transition bonds to
24 the extent approved in the pertinent financing order.

25 (b) A utility or an assignee may pledge transition property as collateral for transition bonds to the
26 extent approved in the pertinent financing order and may provide for a security interest in the transition
27 property as provided in this section.

28 (c) Transition property may be sold, assigned, or transferred for the benefit of:

29 (i) transition bondholders in connection with the exercise of remedies upon a default; or

30 (ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this

1 section.

2 (9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged
3 as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will,
4 subject to the utility's rights under subsection (18):

5 (i) continue to operate the utility's system and to provide service to the utility's customers;

6 (ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the
7 assignee; and

8 (iii) account for and remit these amounts to or for the account of the assignee.

9 (b) Contracting with the assignee in accordance with the commission's authorization may not impair
10 or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute
11 assignment or transfer, or a grant of a security interest, as applicable.

12 (10) Notwithstanding any other provision of law, any provision under this section or under a
13 financing order requiring that the commission take or refrain from taking action with respect to the subject
14 matter of a financing order binds the commission and any successor commission or agency exercising
15 functions similar to the commission, and the commission or any successor commission or agency may not
16 rescind, alter, or amend that requirement in a financing order.

17 (11) A pledge or any other security interest in transition property is valid, is enforceable against the
18 pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties
19 holding security interests in the transition property perfected in the manner described in this section, and
20 attaches only when all of the following have taken place:

21 (a) the commission has issued the financing order authorizing the fixed transition amounts included
22 in the transition property;

23 (b) value has been given by the pledgees of the transition property; and

24 (c) the pledgor has signed a security agreement or other financing-related agreement covering the
25 transition property.

26 (12) (a) A valid and enforceable security interest in transition property is perfected only when it has
27 attached and when a financing statement has been filed with the commission in accordance with
28 procedures that the commission may establish. The financing statement must name the pledgor of the
29 transition property as debtor and identify the transition property.

30 (b) Any description of the transition property is sufficient if the description refers to the financing

1 order creating the transition property.

2 (c) The commission may require other filings with respect to the security interest in accordance with
3 procedures the commission may establish, except that these filings may not affect the perfection of the
4 security interest.

5 (13) A perfected security interest in transition property is a continuously perfected security interest
6 in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or
7 proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection.
8 Transition property constitutes property for all purposes, including for contracts securing transition bonds,
9 whether or not the revenue and proceeds arising with respect to the transition property have accrued.

10 (14) (a) Subject to the terms of the security agreement covering the transition property and the
11 rights of any third parties holding security interests in the transition property perfected in the manner
12 described in this section, the validity and relative priority of a security interest created under this section
13 is not defeated or adversely affected by:

14 (i) the commingling of revenue arising with respect to the transition property with other funds of
15 the utility that is the pledgor or transferor of the transition property; or

16 (ii) any security interest of any third party in a deposit account of that utility perfected under Title
17 30, chapter 9, part 3, into which the revenue is deposited.

18 (b) Subject to the terms of the security agreement, upon compliance with the requirements of this
19 section, a pledgee of the transition property has a perfected security interest in all cash and deposit
20 accounts of the utility in which revenue arising with respect to the transition property has been commingled
21 with other funds, but the perfected security interest must be limited to an amount no greater than the
22 amount of the revenue with respect to the transition property received by the utility within 12 months
23 before any default under the security agreement or the institution of insolvency proceedings by or against
24 the utility, less payments from the revenue to the pledgees during that 12-month period.

25 (15) (a) If a default occurs under the security agreement covering the transition property, a pledgee
26 of the transition property, subject to the terms of the security agreement, has all rights and remedies of a
27 secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise
28 enforce the pledgee's security interest in the transition property, subject to the rights of any third parties
29 holding prior security interests in the transition property perfected in the manner provided in this section.

30 (b) The commission may require in the financing order creating the transition property that in the

1 event of default by the utility in payment of revenue arising with respect to the transition property, the
2 commission and any successor to the commission, upon the application by a pledgee or assignee of the
3 transition property and without limiting any other remedies available to the pledgees or transferees by
4 reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds
5 of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy,
6 reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or
7 transferor of the transition property.

8 (c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and
9 arrearages on the transition bonds and other costs arising under the security agreement must be remitted
10 to the debtor or to the pledgor as provided in the security agreement.

11 (16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another
12 assignee that the parties have in the governing documentation expressly stated to be a sale or other
13 absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute
14 transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other
15 financing of the transition property, other than for federal and state income and franchise tax purposes.

16 (b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by
17 the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or
18 negate the characterization of any transfer as a true sale, other than for federal and state income and
19 franchise tax purposes.

20 (c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must
21 be treated as a pledge or other financing unless the governing documentation or transfer specifically states
22 that transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other
23 absolute transfer in the governing documentation of a transfer is not intended to prejudice the
24 characterization of the transfer as a pledge or other financing for federal tax purposes.

25 (17) A sale, assignment, or other transfer of transition property may only be considered perfected
26 as against any third person, including any judicial lien creditor, when both of the following have taken place:

27 (a) the financing order authorizing the fixed transition amounts included in the transition property
28 has become effective in accordance with subsection (2); and

29 (b) an assignment of the transition property, in writing, has been executed and delivered to the
30 transferee.

1 (18) (a) As between bona fide assignees of the same right for value without notice, the assignee
2 first filing a financing statement with the commission in accordance with procedures that the commission
3 may establish has priority. The financing statement must name the assignor of the transition property as
4 debtor and must identify the transition property. Any description of the transition property is sufficient if
5 the description refers to the financing order creating the transition property. The commission may require
6 the assignor or the assignee to make other filings with respect to the transfer in accordance with
7 procedures that the commission may establish, but these filings may not affect the perfection of the
8 transfer.

9 (b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other
10 insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall
11 perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same
12 extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the
13 case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged
14 to secure transition bonds.

15 (19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in
16 the definition of transition property, whether before or after the issuance of a financing order, does not
17 constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a
18 financing order, including the interest pertaining to a financing order, along with the associated transition
19 property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed
20 transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or
21 interest other than in the order and the transition property arising from the order.

22 (20) The lien under this section is enforceable against the pledgor and all third parties, including
23 judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition
24 property previously perfected in the manner described in this section if value has been given by the
25 purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security
26 interest in all revenue and proceeds arising with respect to the associated transition property, whether or
27 not revenue has been accrued. Transition property constitutes property for the purposes of contracts
28 securing transition bonds, whether or not the related revenue has accrued. The lien created under this
29 section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the
30 transition property, to the fixed transition costs, and to the financing order and any rights created by the

1 order or any proceeds of the order. The relative priority of a lien created under this section is not defeated
2 or adversely affected by changes to the financing order or to the fixed transition amounts payable by any
3 customer.

4 (21) The commission shall establish and maintain a separate system of records to reflect the date
5 and time of receipt of all filings made under this section and may provide that transfers of transition
6 property to an assignee be filed in accordance with the same system.

7 (22) Any sale, assignment, or other transfer of transition property or any pledge of transition
8 property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

9 (23) The transition bonds issued under [sections 1 through 31] are exempt from the provisions of
10 Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public
11 inspection with the state securities commissioner.

12 (24) The granting, perfection, and priority of security interests with respect to transition property
13 and the proceeds thereof are governed by this section rather than Title 30, chapter 9.

14
15 **Section 32.** Section 15-6-137, MCA, is amended to read:

16 **"15-6-137. Class seven property -- description -- taxable percentage.** (1) Class seven property
17 includes:

18 (a) all property used and owned by persons, firms, corporations, or other organizations that are
19 engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas
20 and cities and towns of 800 persons or less;

21 (b) all property owned by cooperative rural electrical and cooperative rural telephone associations
22 that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of
23 a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

24 (c) electric transformers and meters; electric light and power substation machinery; natural gas
25 measuring and regulating station equipment, meters, and compressor station machinery owned by
26 noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

27 (2) To qualify for this classification, the average circuit miles for each station on the telephone
28 communication system described in subsection (1)(b) must be more than 1 mile.

29 (3) Class seven property is taxed at 8% of its market value."
30

Section 33. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property -- description -- taxable percentage. (1) Class nine property includes:

(a) centrally assessed electric power companies' allocations, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities ~~+~~ not including rural electric cooperatives~~};~~. However, properties of rural electric cooperatives serving less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property are included.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven;

(iv) railroad transportation property included in class twelve; and

(v) airline transportation property included in class twelve.

(2) Class nine property is taxed at 12% of market value."

Section 34. Section 69-5-101, MCA, is amended to read:

"69-5-101. Short title. This part ~~shall be~~ is known and may be cited as the "Territorial Integrity Act of 1971"."

Section 35. Section 69-5-102, MCA, is amended to read:

"69-5-102. Definitions. When used in this part, the following definitions apply:

(1) ~~"Commercial premises" means the premises where the business of selling, warehousing, or distributing a commodity or other business activity is carried on or professional or other services are~~

1 ~~rendered.~~ "Agreement" means a written agreement between two or more electric facilities providers that
2 identifies the geographical area to be served exclusively by each electric facilities provider that is a party
3 to the agreement and any terms and conditions pertinent to the agreement.

4 (2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18,
5 or a foreign corporation admitted thereunder to do business in Montana.

6 (3) "Electric ~~supplier~~ facilities provider" means any ~~electrical~~ utility and any ~~electric cooperative~~ that
7 provides electric service facilities to the public.

8 (4) "Electric service facilities" means any distribution or transmission system or related facility
9 necessary to provide electricity to the premises, including lines.

10 ~~(4)(5)~~ (5) "Electric utility" means a person, firm, or corporation other than an electric cooperative
11 ~~which furnishes electrical~~ that provides electric service facilities to the public.

12 ~~(5) "Industrial premises" means the premises where an industrial activity is carried on, including~~
13 ~~but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping,~~
14 ~~cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other~~
15 ~~extractive, fabricating, or processing activities.~~

16 (6) "Line" means any electric supply conductor ~~operating at a nominal voltage level of 34,500 volts~~
17 ~~or less, measured phase to phase.~~

18 (7) "Premises" means a building, residence, structure, or facility to which ~~electricity is being~~ electric
19 service facilities are provided or ~~is~~ are to be furnished; ~~provided, that installed; however, two or more~~
20 ~~buildings, structures, or facilities which that~~ are located on one tract or contiguous tracts of land and ~~that~~
21 ~~are utilized~~ used by one electric consumer for farming, business, commercial, industrial, institutional,
22 governmental, or trailer court purposes ~~shall~~ must together constitute one premises, except that any ~~such~~
23 building, structure, or facility, other than a trailer court, ~~shall~~ may not, together with any other building,
24 structure, or facility, constitute one premises if the electric service to it is separately metered and the
25 charges for ~~such~~ that service are calculated independently of charges for service to any other building,
26 structure, or facility.

27 (8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or
28 a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18."

29
30 Section 36. Section 69-5-104, MCA, is amended to read:

1 "69-5-104. Continuation of ~~service~~ electric service facilities to existing consumers. ~~Every~~ Each
2 electric supplier service facilities provider shall have has the right to ~~serve~~ provide electric service facilities
3 to all premises being served by it or to which any of its facilities are attached on February 1, 1971 [the
4 effective date of this act]."

5
6 **Section 37.** Section 69-5-105, MCA, is amended to read:

7 "69-5-105. **Service to new consumers.** (1) Subject to ~~69-5-106~~ this part, the electric supplier
8 facilities provider having a line nearest the premises, as measured in accordance with subsection (2), shall
9 serve provide electric service facilities to the premises initially requiring service after ~~February 1, 1971~~ [the
10 effective date of this act], which creates a rebuttable presumption that the nearest line is the least-cost
11 electric service facility to the new customer. However, a customer or another electric facilities provider
12 may rebut the presumption, and another electric facilities provider may provide the electric service facilities
13 if it can do so at less cost.

14 (2) All measurements under this part ~~shall~~ must be made on the shortest straight line ~~which that~~
15 can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises.
16 ~~Construction power for premises to be constructed shall be supplied by the electric supplier having the right~~
17 ~~to serve the completed premises.~~

18 (3) If the electric facilities providers are unable to reach agreement as to which electric facilities
19 provider can provide electric service facilities at least cost, an independent consultant engineer agreeable
20 to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on
21 a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction,
22 as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the
23 consumer at the least cost. The cost of those engineering services must be paid equally by the electric
24 facilities providers involved."

25
26 **Section 38.** Section 69-5-106, MCA, is amended to read:

27 "69-5-106. **Service** Electric service facilities to industrial or commercial premises large customers.

28 (1) An electric utility has the right to furnish electric service facilities to any ~~industrial or commercial~~
29 ~~premises~~ if the estimated connected load for full ~~plant~~ operation at ~~such industrial or commercial~~ the
30 premises will be 400 kilowatts or larger within 2 years from the date of initial service provided such and

1 if the electric utility can extend its lines facilities to ~~such industrial or commercial~~ the premises at less cost
 2 to the electric utility ~~or the industrial or commercial customer~~ than the electric cooperative cost. The
 3 estimated connected load ~~shall~~ must be determined from the plans and specifications prepared for
 4 construction of the premises or, if ~~such an~~ estimate is not available, ~~shall~~ must be determined by agreement
 5 of the electric ~~supplier~~ facilities provider and the customer. The fact that the actual connected load after
 6 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric
 7 ~~supplier~~ facilities provider initially providing electric service facilities to continue to provide electric service
 8 facilities to ~~such the~~ premises.

9 (2) An independent consultant engineer agreeable to both electric ~~suppliers~~ facilities providers or,
 10 in the event of failure of the electric ~~suppliers~~ facilities providers to agree on a consultant engineer, an
 11 independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110,
 12 shall determine which electric ~~supplier~~ facilities provider can extend its ~~lines to the consumer~~ facilities at
 13 the least cost to the utility. The cost of ~~such those~~ engineering services ~~shall~~ must be paid equally by the
 14 electric ~~suppliers~~ facilities providers involved.

15 (3) ~~No premises other than another such commercial or industrial premises shall be served from~~
 16 ~~a line constructed under this section."~~

17
 18 Section 39. Section 69-5-107, MCA, is amended to read:

19 "69-5-107. ~~Service to property owned by electric supplier~~ Customer-owned facilities. Nothing in
 20 ~~69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any~~
 21 ~~property owned by the electric supplier. This part may not limit a customer's right to construct, own, or~~
 22 ~~operate electric service facilities for the customer's own use, and construction, ownership, or use may not~~
 23 ~~cause the customer to be considered a utility. A customer may not duplicate existing electric service~~
 24 facilities."

25
 26 Section 40. Section 69-5-108, MCA, is amended to read:

27 "69-5-108. ~~Agreements between electric suppliers as to service areas~~ facilities providers.
 28 ~~Notwithstanding the provisions of 69-5-103 through 69-5-108, an electric supplier may furnish electric~~
 29 ~~service to any consumer at any premises being served by another electric supplier upon written agreement~~
 30 ~~of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant~~

1 ~~to this part, upon written agreement of the affected electric suppliers.~~ Utilities may enter into agreements
2 that identify the geographical area to be exclusively served by each electric facilities provider that is party
3 to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the
4 commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and
5 all customers, except those provided for in 69-5-106."

6
7 **Section 41.** Section 69-5-109, MCA, is amended to read:

8 "69-5-109. **Special provisions for annexed areas.** ~~With respect to service in areas which are~~
9 ~~annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers~~
10 ~~have rights and are subject to restrictions as follows:~~

11 ~~(1) Every electric supplier has the right to serve all premises being served by it on the date of~~
12 ~~annexation.~~

13 ~~(2) An electric cooperative does not have the right to serve any premises initially requiring service~~
14 ~~on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated~~
15 ~~municipalities in which 95% or more of the premises were served by an electric cooperative on February~~

16 ~~4, 1971. (1) Electric facilities providers providing electric service facilities in or near areas that are~~
17 ~~incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since~~
18 ~~1985 or having existing municipal planning zones on [the effective date of this act] shall enter into~~
19 ~~agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit~~
20 ~~the agreements to the commission for approval, pursuant to this part.~~

21 ~~(2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater.~~
22 ~~Agreements must be based on the location of facilities in place on [the effective date of this act].~~

23 ~~(3) If electric facilities providers have failed to negotiate agreements within 1 year from the~~
24 ~~[effective date of this act], the commission shall divide the annexed and planning zone areas into exclusive~~
25 ~~service territories, using the considerations pursuant to [section 44].~~

26 ~~(4) Until agreements are final, electric service facilities to new customers will be provided pursuant~~
27 ~~to 69-5-105."~~

28
29 **Section 42.** Section 69-5-110, MCA, is amended to read:

30 "69-5-110. **Jurisdiction of district courts over disputes.** The district courts of the county or

1 counties within which the premises or lines involved in any dispute are located ~~shall~~ have jurisdiction under
2 this part over all electric ~~suppliers~~ facilities providers subject to ~~the provisions thereof~~ this part."

3
4 **Section 43.** Section 69-5-111, MCA, is amended to read:

5 "69-5-111. **Judicial remedies.** (1) Whenever ~~it shall appear that any~~ an electric ~~supplier~~ facilities
6 provider is failing or omitting or about to fail or omit to do anything required of it by this part or is doing
7 or is about to do anything or to permit anything to be done contrary to or in violation of this part, ~~any the~~
8 electric ~~supplier~~ facilities provider affected ~~thereby shall have the right to~~ may file a complaint in the district
9 court ~~briefly~~ setting forth the acts or omissions complained of and requesting an injunction.

10 (2) If an affidavit showing that grounds exist ~~therefor~~ that an electric facilities provider is in
11 violation of this part is filed with the complaint, a temporary restraining order ~~shall~~ must be issued without
12 notice. A copy of the temporary restraining order, complaint, and affidavit ~~shall~~ must be served upon the
13 defendant, together with an order to show cause why the temporary restraining order should not be made
14 permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to
15 show cause must be held at a date specified ~~therein in the order, which shall~~ and may not be more than
16 10 days after service ~~thereof of the order~~ and ~~shall~~ must take precedence over all matters pending before
17 the district court. A judgment making the injunction permanent or dissolving the temporary restraining order
18 ~~therefore that was~~ issued and dismissing the complaint must be made ~~not later than~~ before 10 days after
19 the hearing on the order to show cause.

20 (3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice
21 of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within
22 20 days ~~thereafter~~ after filing the notice of appeal and ~~shall~~ must take precedence over all matters pending
23 before the supreme court of Montana."
24

25 **NEW SECTION.** **Section 44. Commission jurisdiction over agreements.** (1) All agreements between
26 electric facilities providers must be submitted to the commission for approval. Each agreement must clearly
27 identify the geographical area to be served by each electric facilities provider. The submission must include:

- 28 (a) a map and a written description of the area;
29 (b) the terms and conditions pertaining to the implementation of the agreement;
30 (c) the number and class of customers to be transferred;

(d) assurance that the affected customers have been contacted and have received a written explanation of the difference in rates; and

(e) information with respect to the degree of acceptance by affected customers, such as the number in favor of and those opposed to the transfer.

(2) In approving agreements, the commission shall consider but not be limited to consideration of:

(a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electric service to the existing or future ratepayers of any electric facilities provider party of the agreement; and

(b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic duplication of electric service facilities.

(3) An agreement approved by the commission is valid and enforceable, and except as provided in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into an exclusive territory.

(4) The commission shall state its findings and conclusions for approving or disapproving an agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities providers submitting the agreement to the commission shall act according to the agreement until a decision is rendered.

(5) Upon approval of the agreement, any modification, changes, or corrections to this agreement must be approved by the commission.

(6) The commission may promulgate rules to administer this part consistent with the requirements of this part.

NEW SECTION. Section 45. Repealer. Section 69-5-103, MCA, is repealed.

NEW SECTION. Section 46. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 47. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its

1 applications, the part remains in effect in all valid applications that are severable from the invalid
2 applications.

3
4 **NEW SECTION.** **Section 48. Codification instructions.** (1) [Sections 1 through 31] are intended
5 to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 31].

6 (2) [Section 44] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the
7 provisions of Title 69, chapter 5, part 1, apply to [section 44].

8
9 **NEW SECTION.** **Section 49. Effective date.** [This act] is effective on passage and approval.

10 -END-

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By CHAIRMAN GERRY DEVLIN, on March 13, 1997, at 8:00 a.m., in Room 325 of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Mike Foster, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Wm. E. "Bill" Glaser (R)
Sen. Mike Sprague (R)
Sen. Barry "Spook" Stang (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Jeff Martin, Legislative Services Division
Jody Bird, Judiciary Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 390, 3/7/97
Executive Action: None

HEARING ON SB 390

Sponsor: SENATOR FRED THOMAS, SD 31, Stevensville

Proponents: Warren McConkey, Flathead Electric Coop
Terry Holzer, Yellowstone Valley Electric Coop
Ric Brown, Ravalli County Electric
Bill Drummond, Western Montana G & T
Allen Thiessen, President, Montana Electric Coops
Ron Ostberg, Sun River Electric Coop
Dave Wheelihan, Montana Electric Coop Association
Bob Gannon, Vice Chair and President, Montana Power Company (MPC)
SENATOR JOHN HARP, Kalispell

REPRESENTATIVE BILL RYAN, Great Falls
 REPRESENTATIVE JOE QUILICI, Butte
 Mick Robinson, Office of the Governor
 Perry Cole, Montana Power Company
 Tim Gregori, General Manager, Big Horn County Coop
 Frank Kenny, Vice President, Goldman Sax, a Wall Street
 Investment Company, New York
 Dave Fisher, Chairman, Public Service Commission (PSC)
 Don Quander, Ashgrove, Conoco, LaPacific, Stillwater
 Mining, and Stone Container
 Neil Colwell, Washington Water Power Company
 John Alke, Montana-Dakota Utilities
 Gail Kuntz, Bonneville Power Association
 David Owen, Montana Chamber of Commerce
 Jim Todd, Vice President, Administration and Finance,
 University of Montana, Missoula
 Mike Murphy, Montana Water Resources Association
 Mike Strand, Executive Vice President and General
 Counsel, Montana Telephone Coop and
 Tele-communications
 Greg Groepper, Energy Share of Montana
 Gene Lewner, Rocky Mountain Development Council, and
 Association of Human Rights Development Councils
 (HRDCs)
 Bill Drummond, Western Montana G & T, Missoula

Opponents: REPRESENTATIVE DAVID EWER, Helena
 Bob Anderson, Public Service Commission (PSC)
 REPRESENTATIVE VIVIAN BROOKE, Families Achieving (FAME)
 Jim Payne, Pacific Corp, dba Pacific Power
 Dick Pattison, President, Montana Senior Citizens
 Association
 Archie Nunn, Silver Star, Montana
 Russell Hill, Montana Trial Lawyers Association (MTLA)
 Peter West, Renewable Northwest Project
 Debbie Smith, attorney, Helena, for National Resource
 Defense Counsel
 Patrick Judge, Montana Environmental Information Center
 (MEIC)
 Tara Mele, MontPIRG
 Derek Birnie, Montana People's Action
 Ron Mueller, Executive Committee, Montana Chapter,
 Sierra Club
 Vern Bertlesen, Montana Senior Citizens
 Betty Waddell, Montana Association of Churches
 Ted Lange, Northern Plains Resource Council
 David Dittloff, Montana Audubon

Opening Statement by Sponsor: SENATOR FRED THOMAS, SD 31,
 Stevensville, This is a collaboration regarding the restructuring
 of electrical supply in Montana, involving every citizen of
 Montana. The bill was drafted so as to ensure that all consumers
 are protected and reap the benefit of lower prices, yet to
 maintain viable economic competition in the marketplace. An

effort has been made to avoid haphazard deregulation, as federal legislation is currently pending to deregulate this industry.

We want to treat the companies and cooperatives serving Montana fairly, and in accordance with the Federal Regulatory Energy Commission Act order 888 of last year. The question is if regulation keeps electric costs artificially high. Since we can't conceive of all the contingencies, we strove to find balance in drafting this legislation, with consumer protection as a number one priority. We want to provide them with the real benefits of access to the lowest cost electricity as soon as possible. Since the large customer population is small, it is not difficult to surmount, but the large number of residential and smaller business customers present more of a challenge. The rate freeze for the smaller consumer is a beginning with a promise of lower benefits in the future.

There would be continued regulation of transmission service, so no customers would be without power. We propose a universal systems benefit package at a higher level than today. "Stranded" or "transition" costs are those already incurred by the provider, i.e., costs currently in today's utility rates, and not new or extra costs or windfalls for utilities, but paid for over time by customers.

It is essential to protect coops, yet allow them to opt in or out of the competitive market place. If they choose to opt in, it will have to be as a for-profit entity. Much effort has been put into the collaborative drafting of this bill. Change is coming, and a transitional period is necessary to achieve balance for all Montanans. SENATOR THOMAS introduced Warren McConkey, Flathead Electric Coop, Terry Holzer, Yellowstone Valley Electric Coop, Ric Brown, Ravalli County Electric, Bill Drummond, Western Montana G & T, Allen Thiessen, President, Montana Electric Coops and Ron Ostberg, Sun River Coop to the Committee.

Proponents' Testimony: Dave Wheelihan, Montana Electric Coop Association. We serve 330,000 Montanans. We met with a wide variety of parties on this and negotiations were intense and extensive. If consumers want choice of power source, that involves responsibility to the system in billing as a transit charge. Without these obligations, rates could go up if enough consumers left a system.

We believe the bill, in current form, allows customers to shape their own destiny. Opportunities and benefits in Eastern and Western Montana are clearly different. Changes exist in territorial integrity of the law to allow more efficient use of capital. With the consumer protection provision we support the bill.

Bob Gannon, Vice Chair and President, Montana Power (MPC). There have been forces at work since 1973, and competition is here. Customers are demanding retail access, and we have 550 larger

customers. Federal legislation is imminent. There has been a comprehensive review by the Northwest Energy System - Montana, Idaho, Washington, and Oregon - in the past year. At least eight states have enacted legislation similar to this. Only Tennessee is not involved, as they are dominated by the TVA (Tennessee Valley Authority).

{Tape: 1; Side: A; Approx. Time Count: #22.2; Comments: None}

MPC is finding ways to reduce costs and be competitive. We reduced our work force by 20 percent. Competitive power rates are critical to location of plant. We are finding ways to maintain system integrity and credibility with opportunities for lower energy bills, making Montana more competitive for economic development. The bill should be supported.

{Tape: 1; Side: A; Approx. Time Count: #24.6; Comments: None}

SENATOR JOHN HARP, Kalispell. I want to thank those involved in the process to this point. I believe it has worked well, and thank the Governor for his help and participation, as well. The goal is reliable, affordable electric service in the future.

This process began on May 21, 1996 with PSC notice of review of rates. MPC put together a plan in December, 1996 for customer choice (showed document). This issue is much bigger than Montana, and includes Idaho, Oregon, and Washington. There was a comprehensive review in December, 1996 by the Northwest Energy System. Since January, 1996 the System had 30 meetings involving over 100 people at 10 public meeting locations. In November, 1996 they were notified of MPC pending legislation.

The Legislature will ultimately decide this issue. The Process has been open and fair to all stake-holders. Part of my district is the Columbia Falls Aluminum Plant - the single-most user of power in Montana, and who was reduced-cost power.

{Tape: 1; Side: A; Approx. Time Count: #30.2; Comments: None}

Today Montana has opportunities to set it's own vision, rewarding those most efficient. Yesterday, we passed SB 89, the telecommunications bill. If Montana doesn't set a Montana-friendly direction we may see the same thing we saw with the telecommunications bill.

REPRESENTATIVE BILL RYAN, Great Falls, for Stan DeFree, IVW, Local 44, Butte. I have worked in this industry for 25 years, and employees were involved in the drafting of this bill. We urge your support.

REPRESENTATIVE JOE QUILICI, Butte. We need to change along with the changes taking place in the utilities industry, so we're not left behind. I have a list of all the states and the changes

their making in this area. The National Conference of State Legislatures (NCSL) has been in the forefront of this.

{Tape: 1; Side: A; Approx. Time Count: #38.5; Comments: None}

I believe each state is saying the electricity business is changing in such a way that we need to lower costs to be competitive. The large customer groups have a choice, and I believe residential rate-bearers need protection which is even better with SENATOR HARP's amendment. A state senator from New Mexico said this transition is a leap of faith. The worst thing this legislature can do is nothing.

{Tape: 1; Side: B; Approx. Time Count: #00.; Comments: 8:40 a.m.}

Mick Robinson, Office of the Governor read from prepared testimony (EXHIBIT #1). He also provided copies of the Racicot Administration Electricity Restructuring Principles (EXHIBIT #2). We appreciate being invited to speak on this bill. It was drafted with principles hoping to make clear the Governor's expectations. I am provided a copy of the Comprehensive Review of the Northwest Energy System of December 12, 1996 (EXHIBIT #3).

We believe all parties recognize the substantial progress achieved, but not all of it is in the bill, so the Governor has provided amendments (EXHIBIT #4). Some are clarifying or address format, a few are extremely critical to the Governor's acceptance of the bill. We also support SENATOR HARP's amendments, and strengthening the language concerning the two-year rate cap. The Governor is looking for a complete rate cap. We believe the rate cap has been agreed to in principal, but the exact intent and structure need to be finalized. We believe the bond financing method is appropriate, and asked Mae Nan Ellingson, State Bond Counsel, to give appropriate testimony.

{Tape: 1; Side: B; Approx. Time Count: #4.3; Comments: None}

Perry Cole, Montana Power Company (EXHIBIT #5). We're aiming at customer choice by July 1, 2002, with some limited exceptions. A pilot program is set to begin July 1, 1998 for smaller customers, with entry at that time for larger customers. Twenty-five percent of our customers make up 75 percent of sales volume. The bill provides for consumer education.

Concerning unbundling, the graph on page 5 shows the impact on customer rates. There are no additional or new transition charges, and the rates are no higher than what could have existed under the current transit period. There are rate freeze charges and transmission and distribution charges.

The uniform system benefit changes for public purpose programs, such as low income, conservation, and renewable resources, and public purpose programs are slightly enhanced. There are competitive transition charges on regulatory assets, for costs

incurred as a part of regulation in the past which would continue to be recovered. There are qualifying facility power contract costs, with upwards of \$500 million in stranded costs, which we were required to enter into by federal law, which would be recovered. These are six cent power contracts which escalating into the future against power markets of today of 1.5 to 2 cents. It is very important for us to recover these costs.

There is only a four-year recovery on hydro and thermal costs. MPC's financial future is directly linked with the automatic market cost recovery of competitive transit charges. It is very important to maintain financial integrity via stability, service, and safety.

The PSC will review all these costs. The reciprocity provisions are very important between counties. Transit cost financing is via revenue bonds - another extension process with the PSC. The value of the bonds will be passed on to consumers. The bill requires costs to small consumers if some markets don't develop, and provides for a possible two-year extension. Then, if it's still not working a legislative oversight committee would make a review. We ask the Committee's support.

{Tape: 1; Side: B; Approx. Time Count: #17.5; Comments: None}

Tim Gregori, General Manager, Big Horn County Coop. I'm to speak on the cooperative utilities perspective: transit plans, costs, distribution of service and obligations, universal systems, and territorial integrity (EXHIBIT #6). The plan includes customer education, the history and purpose of rural electric cooperatives, the cooperatives utility exemption, the University System Benefit Program, and the Territorial Integrity Act. All of this will have varied impact to varied consumers.

{Tape: 1; Side: B; Approx. Time Count: #25.5; Comments: None}

Frank Kenny, Vice President, Goldman Sax, a Wall Street Investment Company, New York (EXHIBIT #7). Securitization is common and is primarily a financial tool, for example, for home loans and autos. The purpose is to dedicate a stream of revenue to achieve a AAA rating on these bonds. It is being used across the country in every single deregulation plan. It doesn't affect the state's rating at all, and represents significant savings.

Dave Fisher, Chairman, Public Service Commission (PSC) (EXHIBIT #8). The majority of the PSC supported the bill, and the other amendments may serve to strengthen it. I want to thank the Committee for this hearing, and will be available for questions.

{Tape: 1; Side: B; Approx. Time Count: #30.0; Comments: None}

Don Quander, for Ashgrove, Conoco, La Pacific, Stillwater Mining, and Stone Container, read from prepared testimony (EXHIBIT #9).

We support the bill and freedom of choice at competitive prices. After wages and benefits, electricity is the next most costly item for larger employers in Montana. The new silicon plant in Butte will pay about one-half the existing rate.

{Tape: 1; Side: B; Approx. Time Count: #37.4; Comments: None}

Neil Colwell, Washington Water Power Company. This bill goes far and beyond that of Washington, Oregon, and Idaho, and is good legislation. We support it with one amendment to Section 5, Subsections (4) - (12), (22) and (26). We have more than 600 megawatts, but have only 20 residential customers at the Noxon dam, so it doesn't apply to us. We believe the proponents would agree. If we came in as a marketer, we would be subject to the other parts of the Act.

John Alke, Montana-Dakota Utilities. We are literally separated by a wall from the western three-quarters of the state, and are in a different council. North Dakota is 70 percent of our market, and that state is passing a study bill now..

Gail Kuntz, Bonneville Power Association (EXHIBIT #10). The Northwest Regional Review identified a three percent of regulated utility revenue shortfall remedy.

David Owen, Montana Chamber of Commerce. We support this legislation, and ask for the Committee's support.

Jim Todd, Vice President, Administration and Finance, University of Montana, Missoula. We conducted an exhaustive analysis, and believe there are tremendous savings possible for the University with this bill, as two campuses would qualify as large customers. This would allow a reduction in long range building dependency on the State of Montana. We are asking for a way to include all University locations in the bill.

{Tape: 1; Side: B; Approx. Time Count: #6.0; Comments: None}

Mike Murphy, Montana Water Resources Association. We support this legislation.

Mike Strand, Executive Vice President and General Counsel, Montana Telephone Coop and Tele-communications. We believe the bill has been successfully crafted for the greatest protection to consumers, yet is still competitive.

Greg Groepper, Energy Share of Montana (EXHIBIT #11). We support the Governor's recommended amendments to the bill, as well as SENATOR HARP's amendments. The changes for uniform systems benefits are predicated on what a number of Montanans are paying now for those benefits.

Gene Lewner, Rocky Mountain Development Council, and Association of Human Rights Development Councils (HRDCs). I believe the bill

is fair and generous, and support the rate cap, as well as SENATOR HARP's amendments.

Bill Drummond, Western Montana G & T, Missoula. We serve about 50,000 customers, and stand in support of the bill.

{Tape: 1; Side: B; Approx. Time Count: #13.1; Comments: None.}

Opponents' Testimony: REPRESENTATIVE DAVID EWER, Helena.

Montana's situation is different from California, or Maine, or New Hampshire. We have an abundance of energy reserves, and are close to the Canadian reserves, as well as having low rates in comparison to the national average. Congress is taking several steps back to look at this. Senator Burns said we should not rush into this, but should educate ourselves and the public, as this will take time. Deregulation of telecommunications took seven years.

In January, 1997 the proponents sent all legislators a letter mentioning a cautious approach, especially in rural areas. The letter talks about a task force study and a two-year moratorium during this study.

The coops get to opt out of this bill. We are offering competitive rates in a regulated environment. Retail choice is not the law of the land. I don't accept the premise of the opponents. I suggest we watch and study this and get a bill in at the first of a legislative session, in addition to allowing for plenty of public input. I suggest there will be substantial adverse consequences for ordinary Montanans in this bill.

{Tape: 1; Side: B; Approx. Time Count: #20.3; Comments: None.}

The bill is not clear as to who would issue the bonds. These would be under current federal tax requirements, and would not be tax exempt, and so it is not critical that a state agency issued the bonds. In California the state does this in order to have control. If the Committee wants to do so, I would suggest the Board of Investments, as they now do conduit bonds. The State's credit would not be affected. If the Committee decides to go with the Board of Investments, those bonds would be exempt from state income taxation, and I don't believe the Legislature counted on this. For the record, I recommend each of you read the study by Baxter and Hearst of electric utilities (1995).

The definitions of transit costs and strandable costs are used interchangeably, and the definition in the bill is incredibly wide open. A 4.5 percent cost of producing electricity makes the book value very low. They want the largest possible spread between negative value, and to call those transit costs and put a transit charge on all of us through the PSC. It is, essentially, as tax. In Section 12(3)(c), a utility and a customer can agree to alter this transit charge payment.

The bill says the bond mechanism is likely to generate savings to consumers. I see the cost of imbedded capital as 7.16 percent, but they say it is 13 percent. In the bill there is no way for transit charges to come down. We are stuck with it once bonding is implemented, the bonds have to be taxable, and Montana Power plans to go about ten years at higher than current treasury rates, but about 50 points less than imbedded cost.

The universal systems benefit charge is currently at 2.4 percent, on page 18 of the bill. The new craze called the "race to bond" protects the large customer. There's a top end and they get credit. I suggest they still need to at least pay for low energy income assistance.

I hope you pay attention to licensing, as large customers will be advantaged, and small Montana consumers won't have market power.

{Tape: 1; Side: B; Approx. Time Count: #31.7; Comments: None.}

On page 11, lines 6-8, transition costs are also investment costs made outside this bill. Colstrip comes readily to mind.

On page 19, lines 6-7, what better proxy is there for monopolies and oligopolies than market share? I don't know the dollar amount MPC hopes to put under transit costs - one-half to three-quarters billion dollars - but, you ought to ask them. \$500 million at 7 percent for 10 years is about \$90-100 per customer per year, plus \$10 for universal systems benefits.

This bill is terribly anti-consumer. These companies have total protection under this bill. What happens if energy prices begin to up? If we have the burden of paying the bonds, we're stuck.

I have amendments to empower the PSC to compartmentalize these stranded costs - probably Rosebud, and maybe BGI. They ought to get these done first (EXHIBITS #12 and #13). There is no upside for consumers in this bill. I challenge the Committee to review the initial premise, and am asking that you table this bill, study the issue, and watch the situation carefully.

{Tape: 1; Side: B; Approx. Time Count: #40.0; Comments: None}

Bob Anderson, Public Service Commission (PSC). I am here for myself and for Commission member Bob Rowe. We disagreed with the majority of the PSC, but agree with the big picture and with customer choice. The question is how to get through transit costs?

This process was opened up in May, 1995. In May, 1996 the PSC issued a set of principles very similar to the Governor's principles. We also asked for a restructuring plan, but didn't get one until December, 1996. In the interim, MPC entered the first draft of this bill, and everyone had to react. It was not

open to negotiation or to the public. This is a stranded-cost recovery bill.

{Tape: 2; Side: A; Approx. Time Count: #00.; Comments: 10:14 a.m.}

The balance should not change, and customers need quid pro quo if it does. We support the amendments proposed by the Governor's office. The rate cap is very important. This should either be a divestiture or continued regulation of that supply, and that will probably take many years.

The public benefit is at 2.4 percent, and undermines the 3 percent in the Northwest Regional Comprehensive Review. The FERC Code applies to wholesale transactions, and it is not known yet if it applies to retail. Consumer information ought to be provided by a neutral party.

The PSC will gladly participate, but there is not an appropriation in the bill to provide authority for staff and resources. If this bill passes, Montana will plunge from a high board, as it is the only state with restructuring written by the power companies and the bill was not prepared via public process, nor guarantees stranded cost recovery.

You could permit the PSC to impose an exit fee, so the companies are not leaving stranded costs behind. This would satisfy the problem. You could also provide for reciprocity, and recognize the issues of the cooperatives.

REPRESENTATIVE VIVIAN BROOKE, Families Achieving (FAME). Section 22 needs to be strengthened, so the universal benefits program can be implemented in 1997. We question if 2.4 percent of each utility is sufficient, and submit that 4 percent be substituted on page 18, subsection (13). We believe this renders the previous subsection useless. We urge you to carefully balance the perceived need to restructure.

Jim Payne, Pacific Corp, dba Pacific Power. We operate in the Northwest corner of Montana. We support direct access and are doing so before Congress and other state legislatures. We would support the bill except for the exemptions in Sections 5 and 20, and the reciprocity clause in Section 28. We support competition, but choice implementation dates will occur. If this prohibits Pacific Corp from competing in Montana, that is unfair, and likely an unconstitutional burden. If the bill passes, we will commit to working on finding a common ground.

{Tape: 2; Side: B; Approx. Time Count: 14.8; Comments: None}

Dick Pattison, President, Montana Senior Citizens Association, read from prepared testimony (EXHIBIT #14). We note the protection to rural electric coops. Since this bill surfaced on last Friday, it is difficult to fully evaluate it in a short

time. Congress has taken no action yet, and I believe this bill is premature. There is an average of 5 cents per kw hour in the U.S., 12 cents in Germany, and 17 cents in Japan. The U.S. has the lowest costs in the world. The Montana Senior Citizens adopted this legislation as their #2 priority six months ago, as we oppose deregulation of the utilities industry. We are asking for two years of careful study.

{Tape: 2; Side: B; Approx. Time Count: #20; Comments: None}

Archie Nunn, Silver Star, Montana (EXHIBIT #15), read from prepared testimony in opposition to the bill.

Russell Hill, Montana Trial Lawyers Association (MTLA), quoted 'Bat Masterson' - "the rich get their ice in the summer, and the poor get their ice in the winter". I don't believe the opponents are fairly matched in this, and it comes down to the Governor to represent the consumer. This bill is not before the Legislature because of federal legislation, but because of this legislature, as they are vocally opposed to federal mandates.

The only protection for consumers in this bill is price-fixing, and that is not good. The expertise of the proponents is bigger than Montana. Montanan's interests are not the same as those who do understand this bill. They will learn the hard way to hate this bill, and to regret its passage.

{Tape: 2; Side: B; Approx. Time Count: #28.0; Comments: None}

Peter West, Renewable Northwest Project. We participated in the Northwest Regional Comprehensive Review. The three percent is critical. Montana is most suited for wind and solar development. Renewable resources provide jobs and money. \$28-54 million goes out of Montana regularly now per year. Once we pay off initial capital costs of renewable resources during the first 10 to 15 years, they become very cheap. We need to provide a method for renewables to compete, and so the Northwest Regional Comprehensive Review recommended a minimum standard of three percent for competition for maximum control and flexibility. SB 390 falls short of the Region's compromises.

All eyes in the Washington, Idaho, and Oregon legislatures are on Montana's bill, but each is of those states is at three percent, and no more or no less.

We are suggesting three amendments: 1) include low income weatherization at three percent; 2) return to a ten-year life for the transition period; and 3) do green marketing.

Debbie Smith, attorney, Helena, for National Resource Defense Counsel. We would support the bill if public purpose implemented the three percent, and you funded low income bill assistance, as this was the deal reached by the Montana...

{Tape: 3; Side: A; Approx. Time Count: #00; Comments: 10:53 a.m.}

The Legislature has ultimate authority, so we are asking that you don't underestimate the value of regulations when federal legislation is considered. I will prepared an amendment for the three percent provision prior to executive action on the bill.

Patrick Judge, Montana Environmental Information Center (MEIC) (EXHIBIT #16). The NCSL magazine has a recent article on the electricity industry. We want to see the merits of deregulation carefully considered before passage of this legislation. In Section 5, on page 6, there is a distinction between small and large customers. If there is market development for small customers, the larger customers will still get a better deal. The bill is exceedingly optimistic, as it could lead to a monopoly. In Section 12, transit costs are in a "catch-all" category that consumers will pay for.

Meters cost \$300-400. We agree with REPRESENTATIVE EWER's comments on the rate moratorium, and would support extending the transmission period to four years. In Section 22, "into the future" was in the original agreement, so we are asking you to remove the 2003 sunset provision. The three percent figure developed from the public hearing process. I note that .9 mills is .09 cents.

{Tape: 3; Side: A; Approx. Time Count: #13.5; Comments: None}

Tara Mele, MontPIRG (Montana Public Interest Research Group), (EXHIBIT #17). For the record, we oppose moving forward on this bill at all, and think that a study bill would have been the best idea. It's easy to invite the powerless minority voice to this process, and then come out and say this is a consensus, both here and in the press. We think 2.4 or even 3. percent is too low, and oppose the credit given to industry. How does conservation to their infrastructure benefit those low income households. We also disagree with the sunset in 2003. I thank you for your time, and urge you to table this bill.

Derek Birnie, Montana People's Action. There are 5000 low income Montanans and members of the Northwest Region of Community Organizers in Montana, Washington, Oregon, and Idaho. Our mission is: 1) to improve lives; 2) to institute change for balance of power; 3) to empower individuals to make a difference, and SB 390 goes against all of these. We are asking for federal, citizen, and industry input in Montana.

{Tape: 3; Side: A; Approx. Time Count: #22.5; Comments: 11:15 a.m.}

Ron Mueller, Executive Committee, Montana Chapter, Sierra Club. We have two concerns: 1) market access, as the Governor's principles support access, and we would urge this to be mandatory

in the bill; 2) the systems benefit charge should be 3 percent and not 2.4 percent.

Vern Bertlesen, Montana Senior Citizens states his opposition to this legislation.

Betty Waddell, Montana Association of Churches. I would encourage you to table this bill and allow for public discussion over the next two years.

Ted Lange, Northern Plains Resource Council. We would support a study bill instead of this bill, and believe in shared costs for rates. We see the bill as restrictive and gutting the PSC. We echo the three percent figure as being essential, and taking out big business loopholes. We urge you to table the bill.

David Dittloff, Montana Audubon presents written testimony (EXHIBIT #18).

WRITTEN TESTIMONY WAS PRESENTED BY THE FOLLOWING:

Rachel Shimshak, Director, Renewable Northwest Project (EXHIBIT #19).

Dave Wheelihan, General Manager, Montana Electric Cooperative Association (EXHIBIT #20).

William K. Drummond, Manager, Western Montana Electric Generating and Transmission Cooperative (EXHIBIT #21).

Neal Miller and Kathyn Hiestand (EXHIBIT #22).

Nancy Hirsh, Policy Director, Northwest Conservation Act Coalition (EXHIBIT #23).

Questions From Committee Members and Responses: SENATOR FRED VAN VALKENBURG. I am concerned with the Governor's principle #11. The Fiscal Note says there could be an inestimable revenue impact to local government, but about 25 percent of the Montana tax base is utilities industries. Don't we need more information before this Legislature makes a decision that could mean an economic earthquake in Montana? Mick Robinson. It would be centrally assessed rather than locally, and the tax ramifications are enormous. The method of organization would determine this. That risk has been there forever, and would remain, and may or may not have an impact.

SENATOR VAN VALKENBURG. Why study this after passing the bill? I expected the Governor to be more concerned about the economic tax impact. I believe devaluing of taxes will have an impact. I sense MPC is driving this issue, as they are concerned that their industrial customers are about to jump ship. What is the difference between a transmission system and a distribution system? Bob Gannon. There is some difference at lower levels of

voltage - 100kv lines transmit power throughout the Northwest and are regulated.

SENATOR VAN VALKENBURG. So only 500kv lines are required to be open? **Bob Gannon.** No. The federal government is going through the process of defining what transmission is.

SENATOR VAN VALKENBURG. How is it possible for Stone Container and the University of Montana to leave the MPC system if this bill doesn't pass? **Bob Gannon.** Innovative lawyers around the U.S. have found ways to implement mechanisms to generate sham transactions to circumvent local utilities.

SENATOR VAN VALKENBURG. What's wrong with Bob Anderson (PSC) suggesting an exist fee on stranded costs? **Bob Gannon.** I believe the Legislature does contemplate exit fees for those existing customers wanting to leave the system. The PSC's ability to impose this fee now is in question.

SENATOR VAN VALKENBURG. What if that's all the Legislature did, and we studied the remainder of the bill? **Bob Gannon.** The issue has been studied, and the time is right now, so we would oppose waiting for two years.

SENATOR MIKE FOSTER. How would funding for the university system benefit if there were changes in the ownership structure? **Warren McConkey.** The 2.4 percent figure cam from a "shot in time" of 1995 load, so we could continue to do business in Montana. Restructuring could cause mergers, consolidation, and subdivisions wanting to create their own new coops or public utilities. So, we should allocate from that 1995 commitment of old service territories.

{Tape: 3; Side: B; Approx. Time Count: #00; Comments: 11:31 a.m.}

SENATOR FOSTER. The opponents talked a lot about transitional costs and Colstrip. **Bob Gannon.** Colstrip 4 was never included in the rate base.

SENATOR FOSTER. So stranded costs don't include Colstrip 4? **Bob Gannon.** That is correct.

SENATOR FOSTER. Section 12, page 10 refers to the PSC allowing recovering of costs. Does that mean they're the ultimate decider in those transmission costs? **Bob Gannon.** It is contemplated in this bill that these costs would have to be determined reasonable before they are ever instituted.

SENATOR FOSTER. Do you see this bill as gutting the PSC? **Dave Fisher.** No.

SENATOR FOSTER. Do you agree that Section 12 is an important part of this authority? **Dave Fisher.** Yes.

SENATOR MACK COLE. What is the feeling of members regarding the overall fee of the USBC (Universal Systems Benefit Charge)? **Dave Wheelihan.** We are concerned about it if the level falls below 2.4 percent, and we had to write to our consumers.

SENATOR COLE. Could you comment on **REPRESENTATIVE EWER's** amendment on university system benefits. **Tim Gregori.** The coops were an active participant and have language in the bill. Montana's coops serve diverse groups and populations, and to put restrictive measures on the Crow Reservation may not parallel what we may do on the Flathead, and so either may be above the 2.4 percent level.

SENATOR COLE. How do you feel about the Territorial Integrity Act. **Terry Holzer.** We believe it would help allow coops to compete effectively. The key principle is reciprocity, and current law doesn't allow this. It will change the taxation issue to tax them the same as the rest of utilities at twelve percent. If they became for-profit, they would be taxed the same as MPC.

SENATOR COLE. Would you address the concerns raised on large users? **Don Quander.** We believe these were misunderstandings concerning the USBC. We've agreed to lock in the current level of funding for low income and conservation programs. In the customer bill there is the energy component, the demand component and other changes. .9 mills represents the full current commitment, and we will continue at or slightly above current levels.

SENATOR DOROTHY ECK. On page 11, line 20 exit fees are specifically not allowed. Stranded cost was not addressed in that local governments will have to assume these if they lost part of their tax base. **Mae Nan Ellingson, Dorsey & Whitney, Missoula.** I don't have enough information other than to offer a hypothetical. If there is a significant change the bonds could be shifted, but there is no basis on which to make a conclusion.

SENATOR ECK. Please comment on **REPRESENTATIVE EWER's** amendment eliminating transmission bonds. **Mae Nan Ellingson.** The bill would authorize the counties to have transmission bonds issued in the nature of revenue bonds, as non-by-passable rates to be imposed on customers, and as such, are non-recourse bonds.

The bill is not clear as to who could issue the bonds. These would be under current federal tax regulations, and would not be tax-exempt. So, it is not critical that a state agency issues the bonds, but in California the State does it to have control. If you want Montana to do so, I would suggest the Board of Investments, as they now do conduit bonds, and the State's credit would not be affected.

If you go with the Board of Investments those bonds would be exempt from state income taxation, and I don't believe the Legislature counted on this.

{Tape: 3; Side: B; Approx. Time Count: #19.6; Comments: None}

SENATOR MIKE SPRAGUE. Could you comment on the Washington Power and Light amendment? **Bob Gannon.** I didn't see it, but I believe it's not a problem.

SENATOR SPRAGUE to **Betty Waddell.** I want a written statement as to what part of this bill the Montana Association of Churches is opposed to.

SENATOR VAN VALKENBURG. What is the range of stranded costs referred to by **REPRESENTATIVE EWER.** Transit costs are estimated (a mid-range, large assumption) at \$1 billion, out of forced purchases, regulatory assets, as out of market power generation costs, subject to general criteria.

SENATOR VAN VALKENBURG. I would like to know what the debt cost and equity cost of capital are. **Bob Gannon.** I will get that information for you and the Committee.

Closing by Sponsor: **SENATOR THOMAS.** I appreciate the opportunity for this hearing. Debbie Smith did a good job in making her argument, however we believe the 2.4 percent is appropriate. The process was no one's bill, but a collaborative built by consensus. This bill is about stranded costs, and that's where we start to protect the Montana consumer. The transition numbers are huge, and so we need a transition period. We feel comfortable in freezing those costs, and think that adds a lot of value. The first opponent is, today, where we were months ago. Taxes are not in this bill - current law, yes, but not in this bill.

SB 390

SENATE TAXATION

DATE March 13, 1997

EXHIBIT NO. 1

BILL NO. SB 390

Testimony of Mick Robinson

Mr. Chairman and members of the Senate Taxation committee. For the record, my name is Mick Robinson and I am here today representing Governor Racicot.

The Racicot administration's initial step into Montana's restructuring discussion was documented in the form of a set of principles we hoped would help guide the discussion and clearly communicate the Governor's expectation of legislation that strikes a proper balance among the various interests impacted by restructuring. The specific role played by the administration in the discussions became one of advocating for the proper level of protection for the small consumer of electric power. In addition, the continued funding of energy conservation, renewable resource applications, and low income assistance was imperative.

BRIEF REVIEW OF THE PRINCIPLES

Subsequent to the release of the principles, I was involved, as a member of an administration team, in a most interesting consensus building process directed toward the development of a Montana specific proposal addressing the restructuring of the electric industry within this state. SB 390 is the product of a series of lively, candid,

difficult and at times frustrating discussions among a wide variety of interested parties.

But I believe all the parties recognize the substantial progress that was achieved.

The progress, however, has not been totally incorporated into the introduced version of this bill. I have a package of proposed amendments to SB 390 that I present for your consideration. This package of consensus amendments has been hammered out subsequent to the introduction of this bill. A number of the amendments are clarifying or formatting in nature but a few of the amendments are extremely critical. In fact, the Governor's support for this bill and I believe the support of a number of the proponents that will follow is contingent upon the acceptance of this package of amendments.

There is a significant small consumer protection component that has also not yet been incorporated into SB 390 or the package of amendments. An adequate rate cap for small electric customers is essential. I believe that the rate cap has been agreed to in principle but the exact language and structure must be finalized. And, again to make it perfectly clear, the Governor's support for this legislation is contingent upon an adequate rate cap.

In my opinion, the intent of the Comprehensive Review and the intent of Governor's principles have been achieved through this consensus process.

One final point that I would like to make. A bond financing mechanism is included within this bill. We believe that this financing mechanism is appropriate and will result in verifiable benefits for Montana electric consumers. As such, we have asked Mae Nan Ellingson, the state's bond counsel, to provide technical informational testimony addressing this portion of the legislation.

Thank you for the opportunity to address your committee and I will be available for questions.

5B 390
3-13-97

OFFICE OF THE GOVERNOR

STATE OF MONTANA



MARC RACICOT
GOVERNOR

SENATE TAXATION

DATE March 13, 1997

EXHIBIT NO. 2

BILL NO. SB 390

STATE CAPITOL

HELENA, MONTANA 59620-0801

**Racicot Administration
Electricity Restructuring Principles**

January 15, 1997

Regionally and nationally, electricity industry restructuring is proceeding. It is my belief that Montana can benefit from an efficient electricity marketplace that affords all consumers access to competitively priced electricity supplies. Because our fragile energy dependent state is in two electrical grids, and because our utilities operate in disparate environments, this matter is especially complex in Montana. So, it is in Montana's interest to carefully facilitate the transition to a competitive market while maintaining important public purposes.

To allow Montana to shape restructuring, to meet the specific needs of Montanans, and to prevent outside events from overtaking us, the 1997 Legislature should establish the framework necessary to promote a reasoned and orderly transition to a competitive market system. In making decisions regarding the restructuring of the electricity industry, I recommend the following principles.

Governing Principles

- A. Legislation should establish a date by which all Montanans will be able to choose their electricity supplier.
- B. Legislation should assure that reliable electric service is maintained.
- C. Legislation should provide that all electricity customers in Montana share in the benefits from a restructured industry.

Support Principles

- I. The restructured electricity industry should include the following characteristics:
 - A. Competition among generators of electricity and among providers of retail energy services.
 - B. Minimal regulation for competitive markets.
 - C. All customers should be able to access competitive markets and choose suppliers as quickly as possible, preferably at the same time.

- II. Consumers should be protected from market abuses and unwarranted cost shifts between customer classes.
- III. During the transition to a competitive electricity industry, utilities should have a fair opportunity for the recovery of stranded costs while affording consumers access to market priced electricity. Utilities have the affirmative obligation to mitigate stranded costs to the greatest extent possible.
- IV. During the transition to competitive markets, customers should not pay higher rates as a result of restructuring.
- V. The use of state financing in electricity restructuring should result in verifiable benefits for Montana consumers.
- VI. Important public purposes within the current electricity industry structure should be preserved and assessed equitably among all market participants. Public purposes, wherever possible, should be moved to the private sector as markets develop or mature.
 - A. Low income citizens must have equal access to affordable electricity.
 - B. Low income electricity assistance must be maintained or enhanced.
 - C. Funding of renewable and conservation resources (including market transformation) should continue in a way that is appropriate to the competitive market.
 - D. Funding mechanisms for public purposes should be deployed at the same time retail access becomes available.
- VII. Restructuring should not compromise the environment or environmental protection.
- VIII. The Territorial Integrity Act should be amended to facilitate competition in the electricity industry. It should be changed from defining who is responsible for serving all the electrical needs of a customer to who is responsible for connecting that customer to the electrical grid.
- IX. The effects on state and local governments should be considered when looking at tax issues associated with the restructuring of the electricity industry.
- X. Restructuring in Montana should be as consistent as practicable with restructuring elsewhere in the Northwest.

DATE March 13, 1997
EXHIBIT NO. 3
BILL NO. SB 390



Final Report

Toward a Competitive Electric Power Industry for the 21st Century

December 12, 1996

Exhibit # 3 - Beige bound
book - Comprehensive Review
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P. O. Box 201201
Helena, MT 59602-1201
Phone: (406)444-4775

96-CR26

Governor's Office
AMENDMENTS TO SB 390

1st Reading Copy

3/13/97

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SENATE TAXATION

DATE March 13, 1997

EXHIBIT NO. 4

BILL NO. SB 390

1. Page 1, line 27.

Following: "fostered"

Strike: "."

Insert: "while recognizing the interests of Montana consumers."

2. Page 2, line 27.

Following: "municipal"

Insert: "electric"

3. Page 3, line 30.

Following: "imposed"

Strike: "by"

Insert: "on"

4. Page 4, line 10.

Following: "ownership"

Insert: "issued by the board or other transition bond issuer"

5. Page 4, line 24.

Following: "plan"

Strike: ";

Insert: "and conservation investments made prior to universal system benefit charge implementation;"

6. Page 4, line 27.

Following: "act]"

Strike: ";

Insert: "and costs arising from these investments and commitments;"

7. Page 4, line 28.

Following: "with"

Strike: "any"

8. Page 5, line 30.

Following: "assistance"

Insert: "."

Strike: "as approved by the commission."

9. Page 7, line 6.

Following: "22"

Insert: "and sections 34-44]"

10. Page 7, line 9.

Following: "this"

Strike: "section"

Insert: "act"

11. Page 7, line 27.

Following: "approving"

Insert: ", modifying"

12. Page 9, line 3.

Following: "with"

Insert: "a code of conduct consistent with the"

13. Page 10, line 2.

Strike: "(3)"

Insert: "(a)"

Following: "extended"

Insert: ", "

Strike: "for certain customers."

14. Page 10, line 4.

Strike: "(a)"

Insert: "(i)"

15. Page 10, line 6.

Strike: "(b)"

Insert: "(ii)"

Following: "market"

Insert: "; and"

16. Page 10, line 7.

Strike: "(4) A tracking"

Insert: "(iii) Use a"

Following: "mechanism"

Strike: "must be used"

Following: "rates"

Strike: "to ensure that"

Insert: "that ensures"

17. Page 10, line 9.

Strike: "(5)"

Insert: "(3)"

18. Page 10, line 15.

Following: "including"

Strike: "any"

Insert: "reasonable"

19. Page 11, line 4.

Following: "third-party"

Strike: "professions:"

Insert: "professionals:"

20. Page 11, line 7.

Strike: "prudent or"

21. Page 11, line 14.

Following: "from"

Strike: "."

Insert: "customers for:"

22. Page 11, line 15.

Following: "(i)"

Strike: "customers with"

Following: "new"

Insert: "or additional"

23. Page 11, lines 15 and 16.

Strike: "connected" on line 15 through "facilities" on line 16

Insert: "first served by the public utility"

24. Page 11, line 17.

Following: "(ii)"

Strike: remainder of line 17 in its entirety

Insert: "loads served by that customer's own generation."

25. Page 11, line 19.

Following: "schedule."

Insert: "Public utilities may file, with the commission, tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules."

26. Page 12, lines 9 and 10.

Strike: "transition" on line 9 through "and" on line 10

**Amendment Nos. 26-50 simply make certain clarifications and
renumber or reletter subsections.**

27. Page 16, line 24.

Following: "(2)"

Strike: "On or after"

Insert: "Beginning"

28. Page 16, line 28.

Strike: "(3)"

Insert: "(a)"

29. Page 17, line 1.

Strike: "(4)"

Insert: "(b)"

30. Page 17, line 3.

Following: "subsection"

Strike: "(12)"

Insert: "(7)"

31. Page 17, line 4.

Strike: "(5)"

Insert: "(c)"

32. Page 17, line 5.

Following: "difference"

Strike: "."

Insert: "to the universal systems benefit fund."

33. Page 17, line 6.

Strike: "(6)"

Insert: "(3)"

Following: "may"

Insert: "collectively"

34. Page 17, line 7.

Following: "programs"

Strike: "or"

Insert: "and"

35. Page 17, line 8.

Strike: "(7)"

Insert: "(4)"

36. Page 17, line 11.

Strike: "(8)"

Insert: "(5)"

Following: "bill"

Insert: "and weatherization"

37. Page 17, line 14.

Strike: "(9)"

Insert: "(a)"

Following: "energy"

Strike: "bill"

38. Page 17, line 16.

Strike: "(10)"

Insert: "(b)"

39. Page 17, line 17.

Following: "difference"

Strike: "."

Insert: "to the universal energy bill assistance fund."

40. Page 17, line 18.

Strike: "(11)"

Insert: "(6)"

41. Page 17, line 21.

Strike: "(12)"

Insert: "(7)"

42. Page 17, line 22.

Following: "pay"

Insert: "a universal system benefits programs charge equal to"

43. Page 17, line 23.

Following: "\$500,000"

Strike: "net of"

Insert: "less"

Following: "subsection"

Strike: "(12)"

Insert: "(7)"

44. Page 17, line 25.

Strike: "net of"

Insert: "less"

Following: "subsection"

Strike: "(12)"

Insert: "(7)"

45. Page 18, line 8.

Strike: "(13)"

Insert: "(8)"

46. Page 18, line 11.

Strike: "(14)"

Insert: "(9)"

47. Page 18, line 28.

Strike: "do not have a choice of"

Insert: "have not chosen an"

48. Page 19, line 1.

Following: "because"

Insert: "the commission finds that"

49. Page 19, line 2.

Following: "shall"

Insert: "continue to"

Following: "regulate"

Insert: "the provision of electricity supply by"

50. Page 19, line 3.

Following: "[section]"

Strike: "9"

Insert: "11"

51. Page 19, line 5.

Following: "whether"

Insert: "competition is"

Strike: "price elasticity of demand exists in the electricity supply market"

52. Page 20, line 7.

Strike: "supplier"

Insert: "supplier's"

53. Page 20, line 15.

Following: "bond"

Strike: "if"

Insert: "should"

Following: "supplier"

Strike: "fails"

Insert: "fail"

Following: "or"

Strike: "is not operating."

Insert: "lack financial integrity."

54. Page 20, line 24.

Strike: "normally"

55. Page 20, line 25.

Following: "its"

Strike: "traditional"

Insert: "electric facilities"

Following: "customers"

Strike: "normally"

56. Page 20, line 29.

Strike: "either"

Following: "penalty"

Strike: "or"

Insert: "and/or"

57. Page 21, line 4.

Strike: "or"

58. Page 21, line 5.

Following: "Montana"

Strike: "."

Insert: "; or"

59. Page 21.

Following: line 5

Insert: "(d) committed fraud or engaged in deceptive practices."

60. Page 21, line 16.

Following: "commission."

Strike: "The electrical bill"

Insert: "Electrical bills"

Following: "but"

Strike: "is"

Insert: "are"

61. Page 22, line 22.

Following: "consumer"

Strike: "council"

Insert: "committee"

62. Page 23, line 3.

Following: "representative"

Strike: "of"

Insert: "from a"

Following: "low-income"

Strike: "consumers:"

Insert: "program provider:"

63. Page 23, lines 7 and 8.

Following: "5-2-302." on line 7

Strike: remainder of subsection (3)

64. Page 25.

Following: line 2

Insert: "(17) On or before November 1, 1998, the transition advisory committee shall make recommendations to the governor and the legislature regarding the provision of low-income energy assistance programs in Montana by or from all energy providers."

65. Page 25, line 15.

Following: "bonds."

Insert: "If transition bonds are issued, cost savings associated with and resulting from the bonds must benefit customers."

66. Page 25, line 17.

Following: "issuance."

Insert: "If bonds are not issued within four years of the issuance of the financing order, the order shall terminate. The utility may apply for an extension or renewal of a financing order."

67. Page 25, line 28.

Following: "order."

Insert: "The order shall set forth the term over which the transition bonds are to be paid, but such term shall not exceed 20 years."

68. Page 26, line 2.

Following: "bonds"

Strike: ","

Insert: "and upon the issuance of transition bonds."

69. Page 26, line 4.

Following: "(b)"

Strike: "The"

Insert: "If transition bonds have been issued, the"

70. Page 26, line 15.

Following: "discharged."

Insert: "The board as agent for the state is authorized to include this pledge and undertaking for the state in these obligations."

71. Page 26, line 26.

Following: "contain"

Insert: "on their face"

72. Page 26, line 29.

Following: "this"

Strike: "security"

Insert: "bond"

73. Page 28, line 27.

Following: "the"

Strike: "commission"

Insert: "secretary of state"

74. Page 28, line 28.

Following: "that the"

Strike: "commission"

Insert: "secretary of state"

75. Page 33, line 8.

Strike: "properties of"

Strike: "cooperatives"

Insert: "cooperatives' property used for the sole purpose of"

Following: "serving"

Insert: "customers representing"

**TESTIMONY OF PERRY J. COLE
ON BEHALF OF THE MONTANA POWER COMPANY
IN SUPPORT OF SENATE BILL 390
ELECTRIC UTILITY RESTRUCTURING AND CUSTOMER CHOICE ACT
MARCH 13, 1997**

My name is Perry Cole. I am the Vice President, Business Development and Regulatory Affairs in the Energy and Communications Services Division of the Montana Power Company. I am testifying in support of Senate Bill 390, the Electric Utility Restructuring and Customer Choice Act. Although all provisions of the bill are necessary to restructuring the electric utility industry in Montana, my testimony focuses on certain features of the legislation that are important for Montana Power Company customers and for the Montana Power Company as a company that wants to compete in an unregulated electricity supply market.

Over the last few years, the electric industry has changed fundamentally. The generation of electricity is no longer a monopolistic industry. Real competition exists in the wholesale electricity supply market and because of that competition, over time, wholesale customers have benefited from accessing the competitive power market. Retail customers deserve the same opportunity, over time, to access the lowest cost electricity and expanded energy-related services available in the market.

Montana Power's industrial and larger commercial retail customers are demanding access to the competitive electricity supply market. For a variety of reasons, it is easier for larger customers to gain access more quickly to the competitive electricity supply market and already electricity marketers have visited these customers. However, there is no reason to believe that, given the opportunity and sufficient time, a competitive electricity supply market will not develop for small commercial and residential customers, bringing the benefits of competition to these customers. It is important to Montana Power that all customers are given that opportunity. This legislation creates that opportunity.

Also, the bill creates the opportunity for public utilities, like Montana Power, to compete for those customers that do have competitive supply alternatives in the electricity supply market. As well, the bill allows public utilities to continue to recover certain power supply-related costs that are currently being recovered in rates but that would not be recoverable

in a competitive electricity supply market. Recovery of these electricity supply related costs that were incurred or created because of current regulatory requirements and practices and federal law represents one of the balancing features of the legislation.

The bill creates a date certain, July 1, 2002, by which all customers must have choice of electricity supplier. After that date, assuming competitive electricity supply market exist for all customers, the price of electricity will no longer be regulated by the Public Service Commission for any customers. The Commission will, however, regulate retail transmission and distribution facilities, thereby monitoring the continued safety and reliability of these facilities. If a competitive supply market does not exist for certain customers, the bill provides that the Commission will continue to regulate, through public utility's distribution function, the price of electricity for those customers. If after six years a competitive supply market still has not developed for smaller customers, the legislature may be asked to revisit this issue.

Prior to July 1, 2002, customer choice can be phased in. No later than July 1, 1998, customers with loads of greater than 1000 kW or customers with loads of 300 kW at a meter that can aggregate those loads to greater than 1000kW will be able to choose their electricity supplier. These customers are able to go earlier because, generally, it is agreed that a competitive electricity supply has developed for these customers, as well as the technical and administrative support, such as metering and billing, necessary to enable choice for these customers.

All other customers must have choice of electricity supplier as soon as is administrative feasible, but by July 1, 2002. Choice is delayed for these customers because, generally, it is agreed that a competitive electricity supply market has not developed for these customers, nor has the technical and administrative support necessary to facilitate choice for these customers. To gain a better understanding of how to accomplish choice for small commercial and residential customers and to test the electricity supply market development for these customers, utilities will conduct pilot programs. These programs must be completed prior to July 1, 2000. Montana Power believes that these programs will tell us whether it will be administratively feasible to offer small commercial and residential customers choice of electricity supplier prior to July 1, 2002.

By creating the opportunity for all customers to have choice, the legislation prevents the cost-shifting from large customers to small customers that would occur if large customers were

able to bypass a public utility's transmission or distribution system. On our system, approximately 25% of the customers account for approximately 75% of the electricity sales. While Montana may be a low-cost state nationally, regionally, Montana's electricity prices rank in the middle. As stated earlier, industrial and commercial customers are demanding more competitively priced electricity. Under traditional utility regulation, when customers leave the system, system costs previously born by them are shifted to the remaining customers on the system. In short, when large customers leave the system, small customers pick up the tab. This happened in 1990 when our largest gas customers went to the market and the remaining customers rates went up by 8% even though those largest gas customers took on some obligations as they left the system. The legislation gives the larger customers a definite date when they will have a choice of electricity supplier while protecting against the cost-shifting that would occur under the current regulatory framework if these customers left the system.

Further, as a matter of economic development, Montana must be able to offer competitively priced electricity. New projects considering a site to locate in Montana are very interested in whether competitive market-based electricity prices are or will be available soon. Without market-based electricity prices, facilities will not consider Montana. For Montana Power this represents potential lost business opportunities. For the state, this represents potential lost economic development opportunities.

The bill allows public utilities to recover what are labeled as "transition costs." Transition costs are a public utility's net verifiable generation-related and electricity supply costs that are being recovered in rates now and that would be recoverable in the future if the Commission continued to regulate electricity supply as it currently does, but will become unrecoverable as result of restructuring and customer choice. The legislation identifies certain categories of power supply-related investments and costs as transition costs. Under the bill, public utilities have an affirmative obligation to make all reasonable efforts to mitigate transition costs. Once the Commission has determined the amount of a public utility's transition costs, after a contested-case hearing, the bill allows a certain level of recovery from customers for three categories of transition costs: (1) the bill allows recovery of the unmitigable costs of qualifying facility contracts which are contracts public utilities were required to enter into by federal and state law; (2) it allows recovery of the unmitigable costs of energy supply-related regulatory

assets and deferred charges that exist because of current regulatory practices; and (3) its allows recovery of the unmitigable costs related to public utility owned generation and other power purchase contracts, limited to the costs accruing during the four years between July 1, 1998 and July 1, 2002. Transition costs will be recovered through transition charges to be collected from customers. Customers with new loads of 1000kW or greater that are connected to a utility's system after December 31, 1996 are exempted because there were no costs incurred on their behalf that would qualify as transition costs.

It is important to understand, and emphasize, that transition cost recovery process will not cause customer rates to be any higher than they would have been otherwise under current regulation. As stated earlier, customers are already paying these costs in current rates. Today, various components of electric service (i.e., cost of electricity supply, cost of transmission and distribution, cost of related services) are not itemized on a customer's electric bill, but are "bundled." As a result of restructuring, these costs will be "unbundled", relabeled as transition costs, and itemized separately on a customer's electric bill. For customers who exercise choice of electricity supplier between July 1, 1998 and July 1, 2002 (the transition period), transition charges imposed to collect their share of transition costs will appear as a separate item on a customer's electric bill. Customers who do not exercise choice of electricity supplier during the transition period will continue to pay their share of these generation-related costs as they currently do, that is in a bundled rate. Transition charges will be collected from customers for the duration of their respective recovery periods. The chart in the handouts that accompanied my testimony illustrates this point.

As a guarantee that transition cost recovery will not create extra costs, the bill provides that a public utility may not charge rates or collect costs, including costs reallocated to transition costs, at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact. There are two exceptions to this provision, neither of which is related to costs that qualify as transition costs. First public utilities can recover any increased costs related to public purpose programs such as energy efficiency, renewables, and low income bill assistance greater than those currently in rates. Second, increased costs necessary to implement full customer choice, including but not limited to, metering, billing, and

technology, can be collected from those customers on whose behalf the increased costs were incurred.

Finally, if transition bond financing is authorized, then a public utility must use any savings created by their use to first fund a partial rate or full rate moratorium for two years, and second, to fund transition cost mitigation or shortened transition cost recovery periods. Transition bond financing represents a vehicle through which a utility can reduce transition costs and pass the savings, through lower financing costs, to customers.

As stated before, recovery of transition costs in the manner provided in the bill is critical to Montana Power's ability to have an opportunity to compete in a restructured electric industry and to maintain a reliable electric system. I will briefly mention the other bill provisions that help create a level playing field for electricity suppliers. The bill requires a utility, unless otherwise exempt, to open its transition and distribution facilities to electricity suppliers at terms, rates, and conditions comparable to the terms, rates, and conditions under which the utility's affiliates or unregulated divisions are able to use these facilities. The bill addresses tax issues with the goal of having electricity suppliers being taxed comparably at the state and local levels.

Reciprocity is also an important level playing field issue. For example, if Company A or its affiliates can sell electricity to Montana Power customers through Montana Power distribution facilities, but Montana Power cannot sell electricity to Company A's customers because its distribution facilities are not open, then Company A has a unfair competitive advantage. The reciprocity provisions of the bill prevent this sort of inequity. The bill also creates standard licensing requirements that electricity suppliers must meet. In addition to creating comparable licensing standards, licensing, which will be overseen by the Commission, ensures that the electricity supply offered by an electricity supplier will be adequate in terms of quality, safety and reliability. Finally, the bill amends the Territorial Integrity Act to be consistent with the restructured industry.

In summary, Montana Power believes that customer choice is inevitable and that it is better to be proactive than reactive. Although a restructured electric industry presents significant risks to Montana Power investors, we believe that it is better to recognize that the industry has changed, to acknowledge that the changes can benefit our customers, to listen to our customers who want electricity supply alternatives, and to take proactive steps to offer the benefits of

competition to our customers while creating the opportunity for public utilities, like Montana Power, to compete within the changed industry. This bill offers a reasonable transition to customer choice and a restructured industry that keeps Montana in charge of restructuring its electric industry in a way that works for Montana. On behalf of the Montana Power Company, I urge each of you to vote for this bill.

Electric Utility Restructuring and Provisions for Customer Choice
Cooperative Utility Perspective
Montana Electric Cooperatives' Association

Mr Chairman, members of the committee, my name is Tim Gregori, General Manager of Big Horn County Electric Cooperative and I am here today to comment on Senate Bill 390. Specifically, I will be sharing the Cooperative utility perspective on how Senate Bill 390, in its present form, will affect rural Montanans served by Rural Electric Cooperatives.

In the interest of time I will comment briefly on four topics:

1. Transition Plans for Electric Cooperatives.
2. Stranded, or Competitive Transition Costs for Cooperatives.
3. Distribution Facility and Services Obligations.
4. The Cooperative Utility Exemption.

Transition Plans For Electric Cooperatives:

Section 13 of SB 390 establishes the requirements of a Transition Plan for Cooperative Utilities whose member/owners determine participation in a restructured utility environment is in their best interest. As with all major decisions affecting a Cooperative utility, our consumer/owners will make the final determination as to what will, or will not, benefit them and their neighbors if restructuring becomes reality.

In those instances, where the member/owners of a Cooperative Utility foresees measurable benefits that would support a decision to participate in restructuring, they may direct their Cooperative to proceed with the development of a pilot project for a select number of their consumers. This pilot project will be a test of their "Transition Plan" that will enable customer choice. These transition plans will be similar to those developed by public utilities and certified by the Montana Public Service Commission.

A key element of a Cooperative's Transition Plan will be the requirement to educate the customers they serve about the details of restructuring. Education will be an essential component of an informed assessment of the impact of a decision to select an alternate energy commodity provider.

Stranded or Competitive Transition Costs for Cooperatives

Stranded or Competitive Transition Costs are investments utilities made under current operating conditions that may become uneconomic in a restructured competitive electric utility market environment. Stranded investments refer to wholesale power purchase contracts with utility and non utility generators, regulatory assets, Public Utility generating assets, and costs associated with the renegotiation or buy out of existing generation or wholesale power related contracts.

The lack of generation facilities does not immunize an electric Cooperative from experiencing stranded or transition costs in the advent of a restructured utility environment. Non generating utilities, such as Cooperatives, rely on long term wholesale power contracts to guarantee a reliable source of electric energy. To ensure a firm supply of energy Cooperatives negotiated long term all requirements contracts that "bound" them to a supplier of energy. These contracts not only require a Cooperative to purchase their electric energy from a particular supplier for a prescribed period of time - they prohibit the purchase of wholesale power from any other source.

If the utility industry were to restructure and Cooperative utilities were not allowed to recover these above market costs they would be placed in a very difficult position. Unlike the customers they serve Cooperatives would be contractually precluded from "shopping the market" and securing lower market priced electric energy. As a result, they would be placed at an unfair disadvantage if the market rates for electricity fell below the amount they must charge for their electric energy services as dictated by their all requirements contracts and fixed operating costs.

For Cooperatives stranded investment or transition costs would be a function of their losses resulting from a decline in sales. As the customers they serve exercise "choice" and purchase their energy requirements from a different source the Cooperative would merely become a facility provider or "wires only" utility for those consumers. The transition to a "Wires only Cooperative" may be what happens in certain instances. However, those customers that are precluded from exercising choice should not unfairly be burdened with the residual costs of the "all requirements contracts" from which departing customers once benefited.

Distribution Facility and Services Obligations

Rural Electric Cooperatives are the embodiment of a customer driven low cost provider of electric energy and services. Our customers are the reason we exist and it must be in their best interest that we act. Without Rural Electric Cooperatives small communities from Eureka to Ekalaka, and from Wisdom to Wibaux may still be without central electric station service.

Cooperatives were created to provide service to these areas when it was apparent that a "reasonable rate of return" would never be realized. Rural Electric Cooperatives were the original "provider of last resort" and will most likely continue that role for many years to come. It cannot be over emphasized that restructuring will impact only the electric commodity dimension of this industry. The facilities required to deliver electric energy - the wires, poles, transformers and etc. - will remain and the costs of providing facilities will continue to be borne by the consumers who use of those systems in the receipt of their energy requirements - regardless of who provides their electric services.

The Cooperative Utility Exemption

Restructuring an industry as complex as the Electric Utility Industry will require extensive examination of "detail" before it can be assumed that "All Montana will benefit from an efficient, competitive electricity market". Rural Electric Cooperatives are strong advocates of bringing reduced rates and quality service to all Montana Electric Customers. However, compulsory restructuring must be founded on fact and understanding, and not merely intuitive inclinations that benefits will be an "automatic" result of a restructured utility marketplace.

The measurable benefits of electric utility industry restructuring remain unclear. Several states have implemented varying forms of "customer choice" - with mixed results. None the less, it appears there is a potential for electric customer "savings" in the receipt of electric energy services in a "restructured and competitive" market place. Recognizing the complexity of restructuring, there is clearly a need to offer Cooperatives serving in areas where restructuring does not make sense, the choice to delay participation until the consumers they serve wish to participate.

The net savings a customer will realize, in a restructured electric utility environment, is the difference between energy commodity rates derived using current rate determinants and rates for electric energy determined by market forces. If the customer exercising "choice" is responsible for transition costs that exceed savings realized by purchasing electric energy from alternate suppliers there would be limited justification for a restructured market. Forcing rural Montana electric customers to pay higher rates to justify customer choice would be contrary to the fundamental objective of restructuring. Cooperative utilities are owned and directed by the consumers we serve. The Cooperative option to delay participation is supported by a common sense premise - "who could be better positioned than our consumers/owners to determine if customer choice is in their best interest".

Closing Remarks:

Mr. Chairman, members of the committee, the impact of a restructured electric utility environment on rural Montana and the customers we serve will be as varied as the landscape of this great state that we are so blessed to call home. In its present form, we believe SB 390 offers a well balanced opportunity to exercise choice where appropriate, and protection from another penalty for living and working in rural Montana. Rural Electric Cooperatives are the embodiment of a customer driven low cost provider of electric energy and services. The customers we serve are the reason we exist and it must be in their best interest that we act. Rural Electric Cooperatives want to ensure that benefits of retail electric customer choice will be shared by all Montanans regardless of where they live, or the amount of electric energy they purchase.

Cooperative Benefits Under the Proposed
Montana Legislation for Electric Industry Restructuring
and Customer Choice Act

What are the benefits for Montana's rural electric cooperative consumers?

- ☛ Preserves Cooperatives' Uniqueness
- ☛ Protects Rural Consumers
- ☛ Prevents Loss of Local Control
- ☛ Provides Fair Opportunity for Customer Choice in Rural Montana

1. Preserves Cooperatives' Uniqueness

✓ Cooperatives' uniqueness as not-for-profit entities owned by the consumers they serve is recognized and retained throughout the legislation.

✓ Cooperatives are defined separately and are subject to their own distinct, separate provisions specifically written to recognize their uniqueness of operations.

2. Protects Rural Consumers

✓ Cooperatives which determine that opening their system to full competition for energy services would harm their consumers may opt out of restructuring.

✓ Provision for pilot programs for residential and small consumers permits cooperatives to "test the waters" of a competitive marketplace.

✓ Consumer-members of cooperatives choosing to open up their system to competition are protected from having to bear the burden of sudden increases in utility operating costs if customers "leave" the system by signing up for electricity supply service from another company.

-- After cost mitigation efforts are undertaken, full recovery of these "stranded costs" from departing customers is authorized.

✓ Electricity suppliers reneging on their obligations to customers must reimburse cooperatives at costs in "multiples" of market rates or actual costs.

✓ Cooperatives will continue to serve as the "supplier of last resort" for their customers.

3. **Prevents Loss of Local Control**

✓ Local governing boards of cooperatives retain full authority over operations.

-- Public Service Commission only has control over licensing for electricity suppliers and cooperatives only subject to licensing for any customers outside their normal service territory.

-- Generation and transmission cooperatives not subject to licensing provisions if serving at the consent of distribution cooperatives.

-- Public Service Commission specifically denied authority to regulate cooperatives and "may not compel" cooperative board to change transition plans.

-- Local governing boards are given full authority over:

- * setting of electricity prices if serving as a supplier
- * setting of other rates
- * development of transition plans
- * imposition of transition cost charges
- * setting of wheeling tariffs
- * billing information
- * disconnect/reconnect policies
- * recovery of costs from electricity suppliers failing to meet power supply obligations to customers.

✓ Montana's cooperatives retain local control over spending on conservation, renewable resources and low-income energy bill assistance & cooperatives are permitted to pool their spending on these costs statewide.

4. **Provides Full Opportunity for Customer Choice in Rural Montana.**

✓ Cooperatives are no longer denied the opportunity to provide "poles and wires" service simply because an area they serve has been annexed to a city or town.

✓ Cooperatives opting to participate in competition must provide retail customer choice to all their customers & to educate them on choosing a supplier.

✓ Cooperatives are prohibited from discriminating in favor of their own power suppliers.

✓ Cooperatives opting for competition must completely open their lines to all licensed electricity suppliers.

Testimony of Dave Fisher, Chairman, Public Service Commission**Proponent, Senate Bill 390****March 13, 1997**

Good morning. I am Dave Fisher, Chairman of the Public Service Commission. On behalf of the Commission I thank you for the opportunity to appear before the Taxation Committee as a proponent of Senate Bill 390, the "Electric Utility Industry Restructuring and Customer Choice Act."

A majority of the Commission supports the bill, with the understanding that a number of amendments have already been introduced by Senator Thomas which improve the legislation. The Commission also believes that there may be other amendments to strengthen the legislation as SB 390 proceeds through the legislative process.

The Commission has been actively involved in restructuring issues, has held round-table discussions with broad public involvement and issued its electric restructuring principles almost a year ago. When MPC

proposed this legislation last November, the PSC staff participated in the process to help develop a proposal which would include those restructuring principles important to the PSC and ratepayers. The Commission believes that this work has improved the bill now before you.

Senate Bill 390 has come a long way toward meeting the PSC's concerns about customer choice and competition. What is important to the Commission? The PSC supports a four-year rate cap that covers all elements of the rates. The Commission wants to ensure that there are real opportunities for the small and residential ratepayers to enter into the market. To this end the Commission supports as early an opportunity for residential customer choice as possible. Realistically, the PSC recognizes that the large industrial customers now have the ability to enjoy the benefits of competition and choice.

SB 390 proposes that in making the transition from a monopoly industry to competition that utilities recover some of their previous investment through rates. This recovery of investment in rates should be

balanced in SB 390 with assurances for the ratepayers that they will not pay more than their fair share.

We understand that there may be some amendments offered that would improve the rate cap presently in the bill. The Commission will be following this process carefully. We want the best possible outcome for Montanans. We are confident that the legislature wants the same.

Again, thank you for this opportunity. The Commission and its staff will be available to answer questions and assist you at any time.

SENATE TAXATION

DATE March 13, 1997

BIT NO. 9

FILE NO. SB 390



THE MONTANA POWER COMPANY

Electric Industry Restructuring and Customer Choice

Senate Bill 390 Hearing
March 13, 1997

Forces Driving Industry Restructuring

- Competition is here; power supply markets are competitive.
- Transmission systems are open.
- Customers are demanding retail access.
- Federal Legislation is imminent, as early as 1997.
- Recommendations of the Comprehensive Review of the Northwest Energy System are available as a guide.
- The changes in the Electric Utility Industry are evolving quickly to Customer Choice.

MPC's Restructuring Challenges

- Meeting Customer Needs by Implementing Customer Choice in a timely and orderly fashion.
- Operating MPC Generation in competitive markets for Power Supply.
- Controlling costs and being competitive.
- Maintaining System Integrity and Reliability.
- Maintaining Financial Integrity and Credit Ratings.

Working Together to **Move Montana Forward**

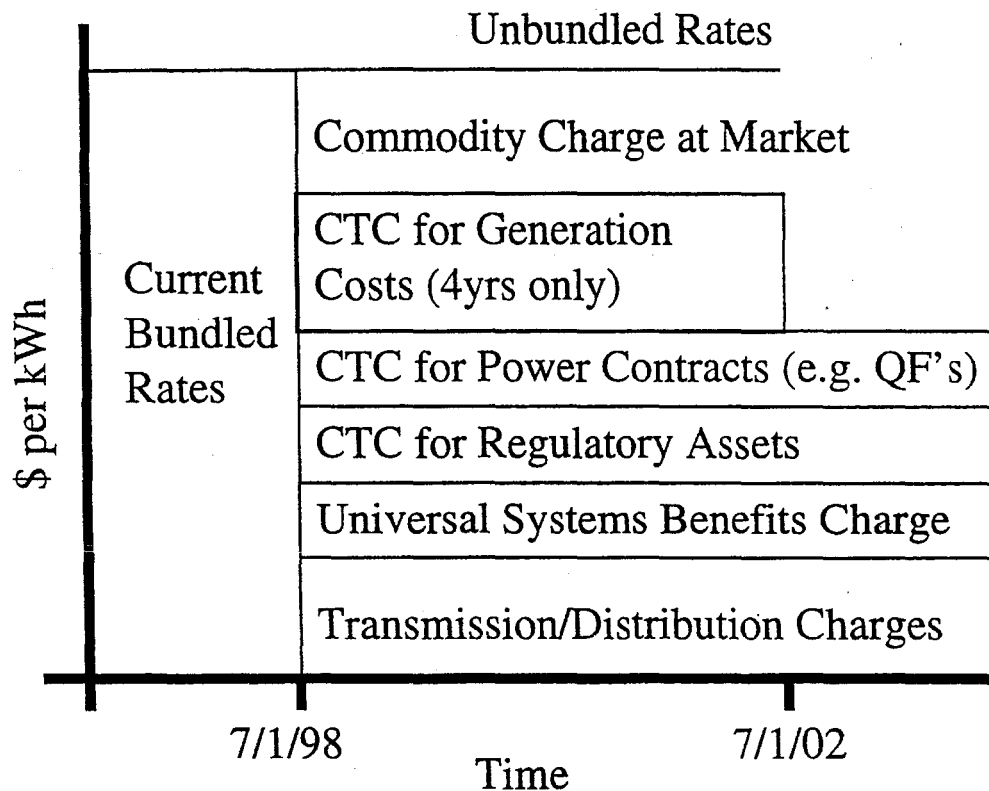
- Montana's Electric Restructuring Bill:
 - Provides all Customers with choice, protection and opportunities for lower energy bills.
 - Allows Utilities to transition to Competition, while remaining financially stable.
 - Makes Montana more competitive in terms of Economic Development.
 - Should be approved by the Montana Legislature as it addresses and represents the interests of all Montanans.

Providing Customers' Choice

- The Electric Restructuring Bill requires utilities to file Transition Plans that:
 - Provide full Customer Choice by July 1, 2002, with limited exceptions.
 - Start Pilot Programs in 1998 for Residential and Commercial Customers.
 - Allow Large Customers to choose Power Suppliers by July, 1998.
 - Provide for Customer Education.

Impact on Customer Rates

- Rates no higher than what would have existed under the current regulatory system during the transition period.
- Rate Freeze Provisions.
- Unbundling of Rate Components:



Provisions for Transition Cost Recovery

- MPC's financial future has a direct link to Transition Cost Recovery.
- Hydro/Thermal out-of-market costs only recovered for 4-years.
 - MPC assumes significant market risks starting in year 5.
- Federally mandated Qualifying Facility cost recovery is critical.
- Recovery of costs resulting from previous Regulatory Decisions (Regulatory Assets) is required.
- Financial stability needed to maintain System Integrity and Reliability

Other Key Elements of Electric Industry Restructuring

- Public Purpose Programs are supported and enhanced.
- Reciprocity Provisions.
- Transition Cost Financing (Revenue Bonds).
- Regulatory/Power Supply Backstop for Customers if markets don't develop.
- Territorial Integrity amended for Customer Choice.
- Consumer Protection through Commission oversight and power supplier licensing.

SB 390
EX

Testimony to Montana Senate Taxation Committee

Montana State Legislature

Gail Kuntz, BPA

March 13, 1997

SENATE TAXATION

DATE March 13, 1997

FILE NO. 10

SB 390

I am Gail Kuntz, Bonneville Power Administration's Montana Liaison. I am responsible for maintaining productive working relationships with Montana state and local government officials, communities and other BPA constituents on public policy issues of mutual interest.

BPA's views on electric restructuring are guided by three basic goals: retain the benefits of the federal Columbia River power system in the Northwest; ensure the system's continued ability to repay financial obligations to the U.S. Treasury and taxpayers; and encourage Northwest interests to reach consensus positions on competitive transitional issues in order to present a unified message to Congress and the rest of the nation. Within this context, BPA offers the following four comments on the proposed Montana Electric Utility Industry Restructuring and Customer Choice Act:

First, BPA's existing power sales contracts deliver substantial benefits to the Northwest, including low cost power and funding for a broad array of public purposes and fish and wildlife recovery. The revenue from these contracts is essential to BPA's continued ability to fulfill the goal of keeping the value and benefits of the Columbia River hydro system, including Libby and Hungry Horse Dams, in the Northwest. Hence, it is important for state retail customer choice legislation to avoid impairing these contracts, most of which terminate on September 30, 2001. We support the authorizations in SB 390 that allow our Montana customer utilities to guide the timing and nature of their transition to consumer choice and to recover their transition costs. We have been assured that SB 390 protects our contracts through these authorities. Any changes in these provisions and understandings as SB 390 moves through the legislative process would be a significant concern to BPA.

Second, BPA considers it important to facilitate development of aggregators to serve residential consumers. The federal power system may be able to serve as a backstop power provider to consumers who do not have an array of alternative energy supply choices available to them. However, current federal legislation specifies the types of power BPA can sell to various types of retail power providers. BPA is required to grant preference to loads of public agency customers, which include cooperatives, municipalities, and other types of public entities that operate on a nonprofit basis. State law can promote or hinder the development of aggregators with preference eligibility to purchase federal power on behalf of residential consumers.

Third, BPA is supportive of consumer choice. The history of BPA has been one of giving Pacific Northwest consumers a choice while delivering overall economic, financial, and environmental benefits to the region. BPA is presently the wholesale

supplier of approximately 20% of the electricity consumed in Montana. On October 1, 1996, BPA reduced its rate for Priority Firm Power by an average of 13.5% and guaranteed those lower rates for five years. This level of rate reduction is a significant benefit, especially in small rural communities and has directly helped some of our Montana customers reduce their members' rates. BPA has also supported customer choice by negotiating diversification rights with our Montana utilities which allow them to purchase portions of their wholesale power from other suppliers.

As retail customer choice unfolds, one of BPA's primary concerns is ensuring that the reliability of the regional transmission system is not compromised. The anticipated large increase in the number of transactions occurring on the system raises important technical questions associated with scheduling, coordination, reserves and other issues. We are actively working to resolve these issues with other involved parties.

Fourth, with respect to universal system benefits and funding to support energy conservation, renewable resources and low income programs, BPA recognizes Montana's unique circumstances due to having approximately 2/3 of its land area outside of the Pacific Northwest region as defined by federal statute. However, it is important to point out that if 3% of regional utility revenues from the sale of electricity are ultimately not voluntarily provided by Northwest regional utilities or mandated by state law as recommended by the Comprehensive Regional Review, the Northwest region may seek a federal backup to remedy the shortfall. BPA prefers that the states and the region's utilities strive to avoid this outcome in the interests of maintaining greater local control of revenues and programs and avoiding the numerous undesirable effects that could be associated with federal collection of the funds.

In summary, BPA wants to work with Montana and the other Northwest states to create a reasonably consistent approach within the region to restructuring the electric utility industry. We believe this can be done in a manner that delivers maximum benefits to end use consumers while allowing BPA to continue to meet its obligations.

Greg Groepper - Energy Share of Mt

LOW INCOME ENERGY ADVISORY COUNCIL REPORT OUTLINE

3-13-97
SENATE TAXATION SB 390
DATE March 13, 1997
EXHIBIT NO. 11
BILL NO. SB 390

The Montana Low Income Energy Advisory Council (the Council) established the following immediate and long-term goals and objectives to guide it in meeting the charges listed below and in Executive Order 5-96.

ADVISORY COUNCIL GOALS

- I. To propose a short-term solution to the home heating problems of low income households that uses historical Low Income Energy Assistance Program (LIEAP) participation rates as the indicator of those in need of assistance.
- II. To develop a long-term funding scenario that encompasses greater participation by those LIEAP eligible households desiring assistance.
- III. To explore, develop, and maximize to the greatest feasible extent, non-LIEAP approaches to the energy needs of low-income people.

ADVISORY COUNCIL OBJECTIVES

- I. Provide affordable energy services (heating costs) for all eligible low-income households.
- II. Provide long-term, sustainable and stable funding mechanism and commitment to provide a reasonable level of direct fuel bill payment, emergency and weatherization assistance.
- III. Encourage a level playing field among all energy providers.
- IV. Distribute resources equitably based on household energy costs and poverty level.
- V. Administer programs in an equitable and efficient manner to the benefit of low-income households, energy providers, and state and local program administrators.
- VI. Encourage private and market based strategies and resources consistent with goals.
- VII. Encourage private contributions and leveraging through federal, state, and private efforts.
- VIII. Encourage flexibility and innovative programs.

ADVISORY COUNCIL RESPONSE TO CHARGES FROM THE GOVERNOR'S EXECUTIVE ORDER

- I. Determine the Scope of the Current Need for Low-Income Energy Assistance in Montana

Based on the 1990 census there are 62,725 low-income households in Montana living at or below 125 percent of poverty and thus potentially eligible for LIEAP. Another 17,439 households (those living between 125 and 150 of poverty) do not meet eligibility requirements for LIEAP.

Based on prior year program participation the Council has found:

- A. Annually between 18,000 and 22,000 Montana households apply for and receive of heating assistance under LIEAP. The cost of providing the appropriate level of heating assistance will be \$6.5 million each year FY98 and FY99;
- B. The Weatherization program has the capacity to cost effectively reduce the heating costs of approximately 2,100 of the highest energy consumption LIEAP households each year. The cost of providing weatherization assistance will be \$3.5 million each year FY98 and FY99;
- C. Annually approximately 1,000 Montana households (those whose incomes exceed LIEAP eligibility guidelines or whose needs are not met by LIEAP) apply for heating assistance through Energy Share of Montana. The cost of providing assistance through Energy Share of Montana will be \$400 thousand each year FY98 and FY99; and
- D. Efforts to ensure that all Montana households in need of energy assistance are aware of available programs and have the opportunity to apply for them must be sustained and/or bolstered.

II. Determine the Status of Montana's Current Public and Private Low-Income Energy Programs

The federal government is expected to provide only \$4.5 million in LIEAP heating assistance and \$2.2 million in weatherization assistance each year FY98 and FY99. Contributions to Energy Share of Montana (a non-profit fuel fund) are uncertain. The Council has established that the shortfall between the cost of LIEAP and Weatherization it is willing to fund and the amount provided for those programs by the federal government is \$3.3 million each year FY98 and FY99 (\$6.6 million total).

III. Develop a Plan for Meeting Montana's Need for Energy Assistance and Weatherization to Ensure That Both Long- and Short-Term Energy and Shelter Needs are Addressed

To cover the deficiency between the total cost of LIEAP and Weatherization and the amount provided for those programs by the federal government, the Council recommends that the Governor propose and the Montana Legislature enact a .3753 percent fuel surcharge on gross retail operating revenues derived from the supply, transmission, transportation, distribution, delivery, customer charges, fees and rentals for electricity, natural gas, propane, fuel oil, coal and distillate fuel at the point of sale for customer use in Montana. Wholesale sales for resale are exempted to avoid multiple taxation. The surcharge may be reduced by credit for qualifying low-income programs for discounts, weatherization, fuel fund contributions, bill write-offs and other bonafide programs which are generally available on a non-discriminatory manner to all qualifying low-income households. Net revenue generated by the surcharge will be remitted to the State for distribution to the above mentioned programs. The surcharge will remain at .3753 for each year FY98 and FY99.

Further, the Council recommends the Governor propose and the Legislature enact a foundation to provide long-term funding for Energy Share of Montana. The foundation will be funded by energy provider donations and a 50 percent tax credit for such donations. The tax credit will be capped at \$1.25 million annually not to exceed \$5 million in total. The tax credit will be applied first to coal tax liability, second to corporation license tax liability, and third to the 101 mills of statewide property tax. For ease of administration the property tax credit would be operated as a state rebate of property taxes paid on the 101 mills for qualifying donations to the foundation. Contributions to the foundation which are eligible for tax credits will be capped at \$10 million. No distributions to Energy Share of Montana will be made from the foundation until \$5 million in assets have been generated. When that occurs, 5 percent of the annual earnings of the foundation will be distributed to Energy Share's Board of Directors and any remaining earnings will be reinvested in the foundation. Selection of a private foundation manager will be accomplished by the Montana Board of Investments in compliance with competitive procurement procedures governing state agencies. Annual tax credit implications of the foundation for the State General Fund (assuming annual donations of \$2.5 million) range from \$.7 million to \$.9 million depending on the mix of taxes against which the credit is claimed.

The Council recognizes that it has only provided suggestions for a short-term solution to the problem and that a long-term solution must include 1) ways to recognize higher energy costs over time, 2) ways to fund program deficits caused by falling federal support over time, and 3) ways to design and discover outreach strategies to increase low-income participation in programs by assuring that eligible

households have an opportunity to access benefits.

IV. Identify Resources Needed to Fulfill the Plan and Develop, Advocate and Aid In Implementing Strategies to Secure the Identified Resources

To implement the course of action described above and to ensure that both the long- and short-term energy and shelter needs of low-income Montanans are met, the Council recommends that:

- A. The Department of Public Health and Human Services request a bill for an act establishing the fuel surcharge and the foundation for enactment by Montana's 55th Legislature;
- B. In accordance with Executive Order 5-96, the Council continue to advise the Department of Public Health and Human Services and the Governor's Office on issues affecting energy assistance in Montana, particularly the long-term need for energy assistance and methods of ensuring that all households in need of energy assistance are aware of available programs and have the opportunity to apply for them;
- C. Future activities of the Council be coordinated with other bodies, such as the Comprehensive Review of the Northwest Energy System and the Northwest Power Planning Council, that are addressing the same and similar issues;
- D. The support of human service agencies, such as HRDCs, religious organizations, and charitable groups, working with low income people be enlisted;
- E. Administrative procedures and costs be reviewed and changes made as necessary to ensure funds are efficiently and equitably distributed to those in need of assistance;
- F. An informational packet and arrangements for presentations to media outlets and editorial boards be prepared; and
- G. Council members arrange for or provide informational briefings for the groups they represent.

Amendments to Senate Bill No. 390
1st Reading Copy

Requested by Rep. Ewer
For the Committee on Taxation

Prepared by Todd Everts
March 12, 1997

SENATE TAXATION

DATE March 13, 1997

EXHIBIT NO. 12

BILL NO. SB 390

1. Page 32.

Following: line 13

Insert: "(25) (a) The commission shall mitigate the burden of transition charges on consumers. The commission may require that transition costs be broken down into categories of unrecoverable value pursuant to [sections 1 through 31].

(b) Different categories as established in subsection

(25) (a) may be treated differently with respect to:

(i) the amount of bonds that may be sold in any given year;

or

(ii) the total amount of bonds that may be secured by the specific category of transition costs.

(c) To further protect the consumer, the commission may require any bond issuance to be structured so that transition charges may be lowered if the bonds are repaid in full. The structural components include but are not limited to:

(i) variable rate debt;

(ii) callable debt;

(iii) provisions in contracts; or

(iv) bond indentures to provide for adjustments to transition charges if bonds are paid or refunded or a condition of defeasance is met."

Amendments to Senate Bill No. 390
1st Reading Copy

Requested by Rep. Ewer
For the Committee on Taxation

Prepared by Todd Everts
March 12, 1997

1. Page 11, lines 6 through 8.
Strike: "or" on line 6 through "plan" on line 8
2. Page 11, line 17.
Following: "use"
Insert: "if the generation constitutes the sole source of
electric power to the customer"
3. Page 11, lines 18 and 19.
Strike: "Subject" on line 18 through "schedule." on line 19.
4. Page 12, lines 5 and 6.
Following: "savings" on line 5
Strike: ", net" on line 5 through "impacts," on line 6
5. Page 12, line 11.
Following: "customers."
Insert: "However, those opportunities must be made available to a
class or classes of customers and not on a case-by-case
basis."
6. Page 16.
Following line 23
Insert: "(2) The commission shall divide the universal system
benefits charge into three separate categories representing
energy conservation, renewable resource applications, and
low-income energy bill assistance. Any offsets or credits
authorized pursuant to [sections 1 through 31] must be for
activities or programs specifically related and relevant to
the individual universal system benefits category."
Renumber: subsequent subsections
7. Page 17, line 5.
Strike: "(2)"
Insert: "(3)"
8. Page 17, lines 18 through 20.
Strike: subsection (11) in its entirety
Renumber: subsequent subsections
9. Page 17, lines 22 through 25.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

10. Page 18, lines 8 through 10.
Strike: subsection (13) in its entirety
Renumber: subsequent subsection

11. Page 18, line 19.
Strike: "(2)"
Insert: "(3)"

12. Page 19, lines 6 and 7.
Strike: "In" on line 6 through "estimates." on line 7.

Amendments to Senate Bill No. 390
1st Reading Copy

Requested by Rep. Ewer
For the Committee on Taxation

Prepared by Todd Everts
March 12, 1997

SENATE TAXATION

DATE March 13, 1997

EXHIBIT NO. 13

BILL NO. SB 390

1. Page 3, lines 9 and 10.
Strike: the second "and" on line 9 through "bonds" on line 10
2. Page 3, line 19.
Following: "order"
Strike: ", including" through "bonds"
3. Page 4, lines 7 through 12.
Strike: subsections (18) and (19) in their entirety
Renumber: subsequent subsections
4. Page 4, lines 29 and 30.
Strike: the first "and" on line 29 through "bonds" on line 30
5. Page 5, lines 2 and 3.
Strike: "for" on line 2 through "customers" on line 3
6. Page 5, line 8.
Following: "utility"
Strike: ", "
Insert: "or"
Following: "assignee"
Strike: ", or other issuer of transition bonds"
7. Page 5, line 13.
Strike: "including" through "bonds"
8. Page 10, lines 19 and 20.
Following: "plan" on line 19
Strike: ", including" through "bonds" on line 20
9. Page 10, line 29.
Strike: "through transition bonds".
10. Page 12, line 5.
Strike: "If" through "any"
Insert: "Any"
11. Page 12, line 14.
Strike: "to actual transition bonds savings"
12. Page 12, lines 15 through 16.
Strike: subsection (10) in its entirety
13. Page 25, lines 14 and 15.

Strike: "through" on line 14 through "bonds" on line 15

14. Page 25, lines 16 and 17.
Strike: the third "or" on line 16 through "issuance" on line 17

15. Page 25, lines 27 and 28.
Strike: "including" on line 27 through "bonds" on line 28

16. Page 26, lines 1 through 4.
Strike: "Notwithstanding" on line 1 through "(b)" on line 4
ReNUMBER: subsequent subsections

17. Page 26, line 13.
Strike: "and transition bondholders"

18. Page 26, line 20.
Strike: "including" through "bonds"

19. Page 26, line 26 through page 27, line 2.
Strike: "The" on page 26, line 26 through "payment." on page 27
line 2

20. Page 27, lines 16 and 17.
Strike: "or" on line 16 through "bonds" on line 17

21. Page 27, lines 18 through 20.
Strike: subsection (7) in its entirety
ReNUMBER: subsequent subsections

22. Page 27, line 23.
Strike: "in connection with the issuance of transition bonds"

23. Page 27, lines 25 and 26.
Strike: "may" on line 25 through "and" on line 26

24. Page 27, lines 28 through 30.
Following: "of" on line 28
Strike: ":" on line 28 through "(ii)" on line 30

25. Page 28, line 4.
Strike: "(18)"
Insert: "(17)"

26. Page 29, line 8.
Strike: "for contracts securing transition bonds,"

27. Page 30, lines 8 and 9.
Strike: "in" on line 8 through "costs" on line 9

28. Page 30, lines 16 through 19.
Strike: subsection (b) in its entirety
ReNUMBER: subsequent subsection

29. Page 30, line 20.

Strike: "(16)"

Insert: "(15)"

30. Page 31, lines 13 and 14.

Following: "be"

Strike: ", revenue" on line 13 through "bonds"

31. Page 31, lines 24 and 25.

Strike: "if" on line 24 through "bonds" on line 25

32. Page 31, lines 27 and 28.

Strike: "Transition" on line 27 through "accrued." on line 28

33. Page 32, lines 9 through 11.

Strike: subsection (23) in its entirety

Renumber: subsequent subsection

TESTIMONY OF DICK PATTISON, PRESIDENT
MONTANA SENIOR CITIZENS ASSOCIATION
BEFORE THE SENATE TAXATION COMMITTEE, 1997 LEGISLATURE
MARCH 13, 1997

Mr. Chairman, members of the committee:

For the record, I am Dick Pattison, president of the Montana Senior Citizens Association. I am here today representing MSCA in opposition to Senate Bill 390. While opposing this bill, we take note that it does contain some protections for our rural electric cooperatives. Created by Montanans starting more than 60 years ago, these pioneering efforts to bring electric power to rural areas spurned by the investor owned utilities or IOUs deserve our continued support.

We believe they shouldn't need these protections, that we should not be disemboweling our Public Service Commission which over the years has helped to keep electric rates among the lowest in the nation for consumers. Yet, we now have a bill before you that would box the PSC into a corner, unable to provide the service to Montanans that the PSC was created to provide.

While we have heard rumors, comments and gratuitous "leaks" about this bill, it surfaced only last Friday, three business days before this hearing. There is no way on earth that anyone can digest and evaluate a piece of legislation as important as this in only three days unless you were among the privileged few with inside information.

We have to ask: "What's the rush?"

This bill is premature. Congress has taken no action. There is no federal legislation that this bill can bring Montana into line with. Some bills died in the last session of Congress related to utilities. Two have been introduced in this session, but action is not likely for nearly two years. At the very least, Montana should wait and see what the Congress is going to do in this area.

Exploring the meaning of transition costs alone should require several days of hearings. Will we be forced to pay for so-called stranded assets--the bad investments some utilities made such as nuclear power plants--when some conglomerate takes over Montana Power Co.? Are there protections for consumers against such a possibility? Will this permit IOUs to charge customers rather than stockholders for replacing outmoded or worn out facilities, lines etc.?

On a personal note I have great respect for Montana Power Co. A former president was godfather to my oldest son. My wife and I are minor stockholders in MPC but we don't believe that as investors we should shift the cost of poor management decisions on to the customers. That should come out of dividend earnings.

We in the United States already have the lowest cost electric power in the world at an average 5 cents per kilowatt hour, compared with 12 cents in Germany or 17 cents in Japan. In Montana, our rates are comparable to the U.S. average at 5.5829 cents for the first 400 residential kilowatt hours. We believe the Montana Legislature should not set up Montanans so that low cost Montana electricity will be shipped elsewhere and costs to Montana consumers go up.

Business columnist Jane Bryant Quinn cautions: "Watch out, as marketing of electricity becomes North America's most costly and risky business." Not a soul knows how it will turn out.

Just six months ago the members of Montana Senior Citizens Assn. at their Annual Meeting unanimously adopted a resolution and gave it No. 2 priority behind opposition to a sales tax which reads in part:

"Whereas, private conglomerates are chomping at the bit to get their chance at this lucrative electricity market, and

Whereas, a great many senior citizens and low income families are on fixed incomes and have no way to combat the loss of reasonably priced electric power, now therefore

Be it resolved that the Montana Senior Citizens Association opposes any deregulation of electrical utilities and will seek the active support of AARP and other organizations so that we can send a message to Congress that deregulation is unwise and intolerable."

The very least this Legislature can do in fulfilling their responsibility to represent we the people, is to not approve this bill and then take the time, the next two years, for a careful, thoughtful, well researched study, keeping the people of Montana, their welfare and their environment as the first and foremost responsibility in your deliberations. My 3,000 cosigners and I thank you for this opportunity to present some of our concerns for your consideration.

TESTIMONY BY ARCHIE NUNN, SILVER STAR
BOARD MEMBER, MONTANA SENIOR CITIZENS ASSOCIATION
BEFORE THE SENATE TAXATION COMMITTEE
IN OPPOSITION TO SB 390

SENATE TAXATION

DATE March 13, 1997

EXHIBIT NO. 15

BILL NO. SB 390

March 13, 1997

I am Archie Nunn of Silver Star, Montana. I immigrated to Montana from the Show Me State of Missouri in 1929. Except for three years during World War II Montana has been my home! And I love it!

I am in total opposition to Senate bill 390, for the following reasons:

1. We are living in a world of reality, not a fantasy world that seeks the utopia in Milton Friedmans economic theory that competition creates lower prices for the consumer.

2. Service utilities that provide basic living needs should be regulated to assure heat, power and light at affordable rates!

3. Consumers should not have to pay for bad business decisions of a corporation that is financed by private stockholders.

Stockholders buy stock with the assumed risk of administrative and management errors in judgment and honest mistakes! I am referring to so-called stranded assets and hidden unknown costs, the transition costs that this bill says belongs to the consumer.

4. It seems to say there is may be some authority left to our PSC. However, it is spelled out in ambiguous and vague language.

5. I see no monetary provision for the licensing and policing of the so called retail utility to prevent fraud and slamming. The recovery of fraudulent damages to the consumer is up to the individual.

6. This issue is so complex and SB 390 so lengthy a document. It is really unfair to expect our legislators to digest and debate with intelligence the merits or demerits of this bill with any degree of accuracy.

7. Historically we have the reality of comparable utilities that serve our state. The telephone, airlines, savings and loans are prime examples of good intentions gone astray. I am sure that most of our legislators are aware of Mark O'Keefe's on going battle with the deregulated communications industry.

8. As a consumer of Vigilante Rural Electric Cooperative. I am concerned about our status as a non profit agency, if and when they start wheeling power for profit retailers.

9. Under section 31, it appears that we the consumer must underwrite - or cosign, if you will the indebtedness of transitional financing.

10. What happens to our tax base during this transition period. It looks to me like another tax base loss.

11. Does anyone really believe the new retail utilities will accumulate any tax base at all? With today's technology and an enterprising CEO could handle it all from his house in Sheboygan or other geographic areas, with no tax base in Montana.

I respectfully thank this courageous committee for listening and pray that your will remember the consumer, especially the residential consumer. Please don't sell us into bondage to Wall Street.

Thank you

Archie Nunn
Box 6
Silver Star, MT 59751



SENATE TAXATION

DATE March 13, 1997EXHIBIT NO. 16BILL NO. SB 3903-13-97
SB390
ex

MONTANA ENVIRONMENTAL INFORMATION CENTER

~~February~~ Mar 13, 1997

Mr. Chairman, and members of the committee. My name is Patrick Judge, speaking on behalf of Montana Environmental Information Center. MEIC is a member of the Northwest Conservation Act Coalition (NCAC), and concurs with their testimony. MEIC is strongly opposed to Senate Bill 390, on both environmental and consumer grounds. Our objections are numerous, but I will focus on three points: the transition timeline, the allocation of transition costs, and the universal system benefits program. But first, let me make it clear that MEIC does not accept the premise that deregulation of the electric utility industry will prove beneficial to ordinary Montanans, or to the environment. This bill in particular concentrates the benefits of restructuring with large industry and with the power companies, and has very little to offer consumers.

I. TRANSITION TIMELINE - Section 5, Page 6

Very early in this bill, a distinction is made between small and big customers. Big customers, those using one or more megawatts of power, get off the system a full four years prior to all other public utility customers. This means that the large customers can shop around and pick up the good deals, long before the rest of us even get into the store. Montana's homeowners and main street businesses will have a difficult time competing with the attractive industrial loads anyway. When, or if, approached by utilities, the product will certainly be more costly than it is for industry. Letting big customers choose first simply aggravates this problem of cost shifting.

If meaningful competition does not develop for small customers, the bill allows for an extension, but only until 2004. The language in lines 27-28 is



exceedingly optimistic. Unfortunately, the legislature can't direct markets to develop. If they don't, these customers will face all of the abuses of monopoly, without the protection of the PSC.

II. ALLOCATION OF TRANSITION COSTS - Section 12, Page 10

While the Public Service Commission will have the authority to determine transition costs, they do not have the authority to allocate these costs in an equitable fashion. Some of these costs were either forced upon the company, or were incurred in the public's best interest. Others, such as Colstrip units 3 and 4 were not. Montana Power Company shareholders should pay their fair share of these costs. On pages 11 and 12, customers are assured that the only costs that can be recovered at a level higher than existing rates are public purpose programs and transition costs such as metering. These meters run in the range of \$300 - \$400, a serious "cost" for a family not even sure that they want choice. Finally, it appears to me (on lines 5-6) that the rate moratorium only exists IF there are "savings, net of consolidated tax impacts."

III. UNIVERSAL SYSTEM BENEFITS PROGRAM - Section 22, Page 16-18

MEIC strenuously objects to the absence of adequate funding for energy conservation, renewable energy sources, and low-income assistance. The level of funding agreed upon in the Comprehensive Review of the Northwest Energy System was 3%, plus additional money for low-income bill assistance - not 2.4% inclusive of bill assistance. But just as important are the exemptions, qualifications, and other loopholes found in this section. On page 17, lines 18-20, you find the creation of a sliding scale so that "an individual customer may not bear a disproportionate share." Considering the excruciating level of detail contained elsewhere in the bill, the ambiguity of this clause is puzzling, and frightening. In the next subsection (12), big customers again walk away with special deals. In no case may a large customer pay more than \$500,000 or 0.9 mills / kwh, whichever is

lower. This "millage" figure is very low. If you look at Representative Ewer's packet, the tenth page in contains a box with funding levels for similar programs in Massachusetts, Rhode Island, and California ranging from 0.2 to 0.4 cents per kwh. Remember that a mill is a tenth of a cent, so in Montana big customers would pay 0.09 cents / kwh. If your operation uses an average of 2,000 kilowatts for a year, you will consume 17.5 million kilowatt-hours of energy. Using this formula, you owe about \$16,000. Say your neighborhood hospital uses only 1000 kilowatts, that's 4.4 million kilowatt-hours. Assuming, that our program translates only into 0.2 cents / kwh like in Rhode Island, they still pay \$18,000. That's more than the customer with twice the load! Only those customers using in excess of 63,000 kilowatts would actually pay the \$500,000.

On pages 17 (lines 26-30) and 18 (lines 1-2), large customers get to credit their internal expenditures on conservation toward their funding requirement. Why can't a Cut Bank homeowner buy a compact fluorescent bulb and credit it against his requirement? Continuing on, in lines 3 - 7 you find that a company could make a one-time retrofitting investment and conceivably opt out of this charge for a decade!

In sub-13, this inadequate and watered down program could be further tampered with or thrown out altogether if a utility is competitively advantaged or disadvantaged. This provision, as well as that found on page 24, lines 17-20, is the "lowest common denominator" approach to public purposes. Proponents claim this bill is about Montana taking charge of its own electric future - why can't we set our own charge without tying it to states?

MEIC does not believe that there are compelling reasons to move forward with deregulation at this time, and certainly not in the form offered by this bill. The threat of large customers leaving the system (which they could only do if they remade themselves as wholesalers or self-generators - not trivial conversions) can be dealt with in the form of a study bill, with exit fees.

MontPIRG

Montana Public Interest Research Group

360 Corbin Hall □ Missoula, MT 59812 □ (406) 243-2907

March 13, 1997

Mr. Chairman, members of the committee.

For the record I am Tara Mele representing the Montana Public Interest Research Group. We are here today to stand up in strong opposition to Senate Bill 390. This bill has been falsely represented as a consensus bill. MontPIRG does not and has not supported this industry bill.

- 1) This MPC energy restructuring bill will serve the needs of industry first and the you and me consumer second. Big business will get first pick at cheap power leaving other consumers with energy at a higher cost.
- 2) This bill only sets aside 2.4% of each utilities annual retail sales for the Universal Systems Benefits Charge (USBC), we argue this is not enough, especially when it is full of loopholes. For instance industry is allowed to receive credit if they make energy conservation improvements. How will this contribute to the programs that are meant to benefit from this money. One of the programs under the Universal Systems Benefits is a low income assistance program. How will improvements made by industry to their own infrastructure (a change that will only serve to save them money in the long run) serve the needs of low income households. Furthermore, if I better insulate my home or make other energy conservation improvements do I too get "credit"?
- 3) The USB percent will be calculated on a sliding scale. In other words, the BIGGER the business the LOWER percent they will pay. This just doesn't make a bit of sense.
- 4) Finally, the most egregious of all. If the Universal Systems Benefits Charge puts a utility at a competitive disadvantage (or advantage) in the regions neighboring Montana, the USBC will be adjusted to the lowest common denominator. Why would there be a competitive disadvantage? Won't all those selling and buying electricity in Montana be subject to the same fee? But most of all, why should Montana bow down to others? I thought we wanted to be in control of our own energy destiny.

Why should big business get a better deal? But most of all why move forward with deregulation at such a break neck speed? Montanans are concerned with deregulation and the impact it will have on their own bills as well as environmental impacts. We urge you not to be hasty in passing this bill. Perhaps the wisest thing we could do in Montana is wait and see.

SENATE TAXATION

DATE March 13, 1997

EXHIBIT NO. 18

BILL NO. SB 390

NAME DAVID DITTLOFF

ADDRESS P.O. BOX 595 HELENA MT 59624

HOME PHONE _____ WORK PHONE 443-3949

REPRESENTING MONTANA AUDUBON

APPEARING ON WHICH PROPOSAL? SB 390

DO YOU: SUPPORT _____ OPPOSE X AMEND X

COMMENTS:

MONTANA AUDUBON BELIEVES THAT THE
INTEGRITY OF THE UNIVERSAL SYSTEMS BENEFIT
PROGRAM MUST BE PROTECTED. ONE ITEM
THAT HASN'T BEEN MENTIONED BY OTHERS
INVOLVES THE UNDER REPRESENTATION OF
CONSERVATION INTERESTS ON THE TRANSITION
ADVISORY COMMITTEE. (1 out of 18 MEMBERS)
THIS COMMITTEE IS VESTED WITH A LOT
OF POWER, AND MONTANA AUDUBON DESIRES
THAT ~~THE~~ MORE ~~PROTECTION~~ PROTECTION OF THE
CONSERVATION AND RENEWABLE RESOURCES
~~IS~~ IS NEEDED BY INCREASING THE REPRESENTATION
OF CONSERVATION INTERESTS ON THE TRANSITION
ADVISORY COMMITTEE **WITNESS STATEMENT**

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

WITNESS. F11

**Renewable
Northwest
Project**

*A project of the Northwest
Conservation Act Coalition*

J. Rachel Shimshak
Project Director

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Founding Cosponsors

Northwest Conservation
Act Coalition

American Wind
Energy Association
CE Exploration

Center for
Energy Efficiency and
Renewable Technologies

Citizens Utility Board

Natural Resources
Defense Council

Northwest Environmental
Advocates

Oregon State
Public Interest
Research Group

Portland Energy
Conservation Inc.

Proven Alternatives, Inc.

Sierra Club

Solar Energy
Association of Oregon

KENETECH Windpower

Washington Environmental
Council

SENATE TAXATION

DATE March 13, 1997

EXHIBIT NO. 19

BILL NO. SB 390



SB 390

Montana Senate Taxation Committee

March 13, 1997

Renewable Northwest Project

Testimony of the Renewable Northwest Project

Rachel Shimshak, Director

Peter West, Senior Associate

The Renewable Northwest Project (RNP). RNP is a regional organization dedicated to promoting the implementation of new renewable resources such as solar, wind, and geothermal in the Northwest. Our organization is sponsored by resource developers, environmental and consumer groups. RNP participated in all aspects of the Comprehensive Review of the Northwest Energy System, which met at the request of the four Northwest governors and negotiated a compromise set of recommendations on electricity restructuring.

Rachel Shimshak was one of the 15 individuals chosen by the Governors to lead the year-long process. During part of that year Rachel chaired the work group on public purposes along with Jim Davis of the Douglas County PUD in Washington.

With the help of the 100 or so regular work group participants, and a significant amount of public testimony throughout the summer and fall, the members of the Regional Review identified a strategy for maintaining our regional commitment to invest in conservation, new renewable energy resources, and low income services in a way that is compatible and consistent with a competitive market. The goal we tried to achieve was to rely on the market wherever possible, but to target investment to overcome market failures, and maximize the local control of those investments.

The final recommendation was for each state to establish a statewide, minimum investment standard of 3% of total retail revenue, while allowing for the maximum amount of local control. That balance won the support of the aluminum, industrial, public and private utility members of the Review, and along with many other important issues, resulted in the compromise report. I hope the final report recommendations will earn your support as well.

The bill that is before you, SB 390, falls short of the Regional Review's compromise on public purposes. Unless and until it is consistent with the



Review's recommendation to reserve 3% of total retail revenue for conservation, renewables and low income services, we cannot support it.

The goal of the Regional Review was to identify some policies and programs that would allow the region to work together to deal with a changing electricity industry and preserve the many system benefits we now enjoy. While it is important for each state to do what is right for the state, it is also important to create mechanisms that are consistent with the rest of the region. The compromise we supported in the Review, along with all of the other constituencies, included a 3% minimum standard for public purposes that applied to all retail distribution companies and direct service customers.

The provisions made in the Review to allow large customers to get credit for new conservation investments made in their own facility was key to gaining their support for the compromise. While we personally did not support the policy that implied, we thought it was a fair compromise and, as part of the package, it ultimately won our support. In addition, the specific percentages of the 3% to be spent on conservation, renewables, and low income services were key to gaining our support for the package. We believe that the Regional Review compromise will deliver both economic and environmental benefits if implemented, and we urge you to give it your support.

The 3% standard establishes a minimum for environmental protection and for covering the risks of price volatility, resource availability and consumer protection. We agreed to this minimum level in the hopes that this standard could be used to ready the market to effectively react to future uncertainties and to imbed in the new market critical values that can maintain our cherished quality of life in the region. Without a realistic standard the market will not effectively hedge risks or consider long-term least cost and environmental risk.

Today, I want to spend a few minutes talking about renewable resources. Renewable energy resources are those that are naturally occurring and inexhaustible, such as solar, wind and geothermal. Montana stands out as one of the states with the greatest potential for wind development in the country. That potential provides an opportunity for environmentally responsible jobs, and leadership for the state.

Renewable energy has a long history in the region. It is recognized as a priority resource for the region in the 1980 Federal Power Act, and indeed the low rates and clean air we enjoy in the Northwest are primarily due to the forward looking energy investments made in our hydro base. Renewable resources are a public purpose because they create benefits we all share, such as clean air, stable rates, and long-term low cost power. Because these resources face market barriers, public policy support is necessary to ensure their implementation in a changing electricity system. Without this support the

new market, because of its design and short-term pressures, will not be able deliver renewables in a meaningful way or when needed.

The benefits of renewable energy are many. Solar, wind and geothermal resources have no fuel costs and therefore eliminate the uncertainty and expense of future fuel price increases. They lower our dependence on imported fuel supplies and keep good paying jobs in the region. They diversify our energy portfolio and stabilize rates for the long run.

Solar, wind and geothermal resources neither harm fish nor create the air, water and land pollution associated with fossil fuels. By contrast, just one current, midsize gas-burning plant emits the same amount of carbon dioxide as 188,000 cars. Nationally, between one-fourth to two-thirds of all air pollution comes from electricity production which distinguishes this industry's restructuring from telephones, airlines and trucks.

Renewable energy facilities work in harmony with the Northwest hydroelectric system. As the operations of hydro systems change to ensure fish survival, renewable energy sources can be used to replace lost capacity to keep the system clean. Once underway, these projects can help retire older, dirtier plants.

Renewable energy uses local resources, providing economic development benefits and jobs. Every 240 average megawatt (aMW) natural gas project sends \$28 - \$54 million out of the region annually to pay for fuel costs. Montana has the most wind and solar potential of any Northwest or West Coast state. You would be the state best positioned to take advantage of a renewable standard. Studies indicate that renewables create at least twice the number of jobs as natural gas plants and 100 aMW of wind power, alone, can translate into 400 jobs.

There are two principle reasons that renewable resources are at risk in a more competitive electricity system. First, renewable resources have high capital costs in the short-term, and low costs in the long-term. In a market that focuses on short-term costs, renewables are at risk. Second, renewables provide unique benefits such as environmental improvement, local economic development, and energy system diversity, which are not reflected in their price. If all energy resources were priced to reflect all of their respective costs and benefits, renewables would be competitive. But, with a system that only looks at the direct costs of resources in the very near term, and ignores long-term benefits, renewables are at a disadvantage.

We recommend that the state adopt a minimum investment standard that is implemented concurrently with retail choice. That minimum standard should have as much local control as practicable, and be non-bypassable. The standard should be consistent with the emerging energy market and be competitively neutral, which means that it applies to all market players. The Comprehensive Review recommends that the minimum

standard be set at 3% of total retail revenues for the state, with a half of one percent dedicated to new renewable resources. We support that recommendation.

One half of one percent of retail revenues will help continue the momentum on renewables in the region. It will help secure the five projects in progress in the Northwest and create a foundation of new technologies on which a self-sustaining market can grow. It will help build capability and experience with these resources in the region to keep our renewable edge. It should place Montana in the forefront of renewable resource development. This modest investment will be an insurance policy against uncertain futures, such as fuel price spikes, and increased environmental restrictions.

The state has a very important role to play in ensuring that implementation of the standard is consistent across all utilities and the direct service customers. In addition, the state should work out a simple system for suppliers of electricity that provides basic information to consumers about their electricity, such as the type of generation, and its environmental characteristics.

Another important state responsibility is to certify what constitutes a "green" resource. New Hampshire ran a pilot program for 14,000 customers last year and was surprised to find that marketers were offering non-nuclear, gas, and Canadian hydro as "green" resources. Establishing the rules of fair play will be a key element to ensure that an evolving electricity market benefits all.

Finally, we need to preserve the role of local utilities to use their creativity and innovative ideas in determining the implementation strategy for public purposes.

The goal of any legislation dealing with electricity restructuring should be to create a system that produces both economic and environmental benefits. You have the rare opportunity, up front, to ensure that important investments for our future are not sacrificed in this changing market. Reserving 3% of total electricity revenues will help us build a more sustainable electricity system, keep the air clean, and maintain our quality of life in the region. This is about generation...the next generation.

Thank you.

Testimony of the Montana Electric Cooperative Association before
the Senate Taxation Committee-SB390

Mr. Chairman, members of the committee, my name is Dave Wheelihan, I am the general manager of the Montana Electric Cooperative Association. Montana Electric Cooperatives have more than 90,000 consumers, translating to electrical service to more than 330,000 Montanans. On behalf of our members I am here today to support senate bill 390.

I'll give you a brief overview of how we got to where we are today on this bill, and later, Tim Gregori, Manager of Bighorn Electric will explain the cooperative sections of the bill.

As you know, at the beginning of this session, the position of the Montana Rural Electric Cooperatives on restructuring was to offer a bill establishing a steering committee to formulate a plan for customer choice. The committee would then report back to the legislature in 1999 with its recommendations. However, we met with various parties interested in restructuring to see if it was possible to make restructuring work for electric cooperatives at a quicker pace. The negotiations were intensive and extensive. The legislation before you is the result of those negotiations and we believe offers rural electric consumers opportunities and protections if restructuring occurs in Montana.

It is our belief that if our consumers want to choose their power supplier, we should offer them the ability to do so. However, with that choice comes a responsibility. If a consumer chooses to pick a power supplier different than the cooperative's, they have a responsibility to the remaining consumers for the infrastructure built to supply them power. The cost of poles, wires, power contracts, administrative and maintenance items currently are all built into a consumer's rate. If a consumer chooses another power supplier other than the cooperative, this bill ensures that they still have an obligation to the system. That obligation would show up on the departing consumer's bill in the form of a transition charge representing the investment our cooperatives have made on behalf of that consumer.

To Montana electric cooperatives, making sure remaining consumers don't have to pay for someone else's choice through higher rates is the key to our support of this legislation. With current technology and innovative contract arrangements, consumers can find ways to leave our systems now without any obligation to remaining consumers. Once they are gone, we can't get them back to pay for their obligation. That means the remaining consumers have to pick up the tab. Without the obligations imposed in this

bill, our rates would go up if enough consumers leave the system.

As non-profit power suppliers, our members own us and decide what's in the best interest of the cooperative. That local control has worked well for over 60 years, and is retained in the cooperative sections of the bill. In our opinion, our consumers should continue to decide what's in the best interest of our electric cooperatives. We worked hard on bill language that reflects the local control and the uniqueness of electric cooperatives. We think the bill in its current form allows our cooperatives to shape their own destiny.

For us, trying to strike a balance between big electric cooperatives, small electric cooperatives, growth cooperatives, no-growth cooperatives, the various power suppliers and opportunities and protections was a daunting task. As we said during the negotiations, restructuring to the consumer-owners of a rapidly growing western electric cooperative means something different than it does to the farmers and ranchers of a small eastern cooperative. Clearly, the opportunities and benefits are different. That's why this bill gives electric cooperatives flexibility in opening up their systems to customer choice. Simply put, some electric cooperatives are ready now for customer choice, some cooperatives need time.

The bill also changes existing territorial integrity law to better prevent the wasteful duplication of facilities. This will allow for more efficient use of capital in a capital intensive environment.

Finally, the bill allows the local boards of cooperatives to continue to target their dollars to low-income energy bill assistance, conservation and renewable resources.

With the flexibility for local boards, the consumer protections and the opportunities the legislation presents; the Montana Electric Cooperatives' Association supports SB390. Thank you and I'll be happy to answer any questions the committee might have.

DATE March 13, 1997EXHIBIT NO. 21FILE NO. SB 390

Testimony of
William K. Drummond
on Senate Bill 390
March 13, 1997

Good Morning. My name is William K. Drummond and I am the Manager of the Western Montana Electric Generating and Transmission Cooperative (WMG&T). The WMG&T is comprised of six rural electric cooperatives and one tribal utility that serve approximately 50,000 consumers in Western Montana. My utilities purchase the majority of their power at wholesale from the Bonneville Power Administration (BPA). By having access to new, cheaper sources of power resulting from the current restructuring of the electric utility industry, these utilities are saving over \$1 million per year on their wholesale power bills.

In addition to managing the WMG&T, I served last year on the Comprehensive Review of the Northwest Energy System that was initiated by the governors of Idaho, Montana, Oregon and Washington. The purpose of my testimony is twofold: to provide an overview of the Comprehensive Review and to compare the recommendations of the Comprehensive Review with the proposed restructuring bill before you, Senate Bill 390 (S.B. 390). I believe S.B. 390 substantially comports with the recommendations of the Comprehensive Review.

The Comprehensive Review

Recognizing the changes that are sweeping the electric utility industry and the risks to the Northwest from not having a regional consensus on the stewardship of the Columbia River and the operation of the BPA, the four Northwest governors convened the Comprehensive Review. The goal of the Review was to develop recommendations for changes to the structure of the electric utility industry in order to:

- Protect the region's natural resources
- Distribute equitably the costs and benefits of a more competitive market
- Assure an adequate, efficient, economical and reliable power system

The governors appointed 20 people with diverse backgrounds to serve on the Review. Three were from Montana: John Etchart, Chairman of the Northwest Power Planning Council; Bob Gannon from Montana Power; and myself.

After a year of study, debate and compromise, we made recommendations in four main areas -- competition/customer choice, transmission, federal power marketing and public purposes. We forwarded our recommendations to the governors in December and they subsequently appointed a Transition Team to follow the region's progress toward meeting the recommendations.

Senate Bill 390

S.B. 390 and the recommendations of the Comprehensive Review intersect in two important and closely linked areas -- competition/customer choice and public purposes. The issues of transmission access and federal power marketing are largely outside state jurisdiction.

On competition/customer choice, the Comprehensive Review recommended all customers have full market choice by July 1, 1999, while recognizing that some jurisdictions may want to phase in full retail access. Many questions remain about whether full choice will actually be a reality, especially for rural residential customers. The Review recommended a number of safeguards including ongoing oversight to ensure that consumers will really be better off with competition. The primary danger identified was that the benefits of increased competition would go to large customers at the expense of small customers. The Review was largely silent on the issue of stranded cost recovery.

S.B. 390 allows full customer choice for large customers by July 1, 1999, with pilot programs preceding full access in 2002 for smaller customers. An oversight board is established to monitor the impacts of retail access and make subsequent recommendations to future legislatures. There is the opportunity for utilities to "opt out" of competition if they choose prior to 2002. Full stranded cost recovery is allowed under this proposal.

Public purposes -- the funding of energy efficiency, renewable resources, low income weatherization and low income bill assistance -- was perhaps the most controversial element of the Comprehensive Review. The Review recommended that the region spend 3 percent of total utility sales revenue, about \$210 million per year, on public purposes, not including low income bill assistance. While recognizing its importance, no specific figure was established for bill assistance. Revenue to meet this 3 percent target is to be collected through a non-bypassable, local distribution system access charge (meter charge). This charge applies to all loads, regardless of size. Because only a portion of Montana falls within the Columbia River basin, the Review specifically recognized that legislation in Montana may need to be structured differently than in other states.

S.B. 390 also contains language relating to public purposes. Like the Comprehensive Review recommendations, it proposes a non-bypassable system benefits charge. The proposed level is set at 2.4 percent of sales revenue, including low income bill assistance, versus the 3 percent in the Review recommendations. Unlike the Review recommendations, S.B. 390 provides a cap for large power users of \$500,000 per year. Finally, S.B. 390 provides an opportunity to examine what other the Northwest states are doing with public purposes and reexamine the Montana contribution standard accordingly.

Summary

The recommendations of the Comprehensive Review and S.B. 390 both address customer choice and public purposes. The primary question on customer choice is whether the benefits of a competitive market will come to Montana, and especially to the rural residential consumer. I believe it will happen. I believe you can make money bringing these benefits to rural consumers. I also believe you can do it even better if you do not have to make a profit.

The two main questions on public purposes are what happens if Montana fails to provide a public purposes spending standard and how much public purposes funding will the market provide by itself? Several different bills now before Congress provide for mandated spending, but in ways significantly inferior to that proposed in S.B. 390. The main advantage from the approach of S.B. 390 is that all the money collected locally can be spent locally, depending upon the needs and desires of the local utility. How much funding is really necessary remains an open question. ~~Does the 2.4 percent of S.B. 390 meet the Review's 2 percent? No, but cooperatives are currently spending 3.5 percent anyway. The Review contains no cap on public purposes expenditures for large users, but \$500,000 per year is still significant.~~

I believe that S.B. 390 is largely in accord with the recommendations of the Comprehensive Review.

SENATE TAXATION

DATE March 13, 1997

EXHIBIT NO. 22

March 11, 1997 BILL NO. SB 390

Neal Miller
Kathryn Hiestand
8301 Starling Drive
Bozeman, MT 59718

Senator Gerry Devlin
Chairman Senate Taxation Committee
Capitol Station
Helena, MT 59620

Dear Senator Devlin,

We are writing to let you know that we are concerned about the language in SB 390, the bill written by Montana Power Company on the direction electric utilities should take in deregulation. As Chairman of the Committee that will hear this bill we would like you to be aware of our concerns. We feel that SB 390 needs to be amended.

We urge you to ensure the equality and fairness of electric rates to consumers and industry alike.

We urge you to include major investments in conservation and renewable as well as clean energy.

We urge you to ensure sufficient funding for low-income energy services.

We urge you to mandate that utility shareholders—not only ratepayers—pay the costs associated with transition to deregulation.

SB 390 proposes an 18-member committee who will determine the details of the process of deregulation. We urge that low-income and residential consumers have equal representation alongside industry and government.

We believe that the process of deregulation should have benefits for everyone.

Sincerely,
Neal Miller
Kathryn Hiestand

Neal Miller
Kathryn Hiestand

Northwest Conservation Act Coalition

217 Pine Street, Suite 1020
Seattle, Washington 98101
p (206) 621-0094; f (206) 621-0097

SENATE TAXATION

DATE March 13, 1997

EXHIBIT NO. 23

March 12, 1997 NO. SB 390

FAX MEMO

TO: Lynn Staley, Senate Taxation Committee

FR: Nancy Hirsh, Policy Director

RE: The Coalition's testimony for the Committee hearing on SB390

pages, including this cover: 4 PAGES

Attached is the written testimony of the Northwest Conservation Act Coalition regarding SB 390. NCAC will not be at the Thursday hearing but would like to submit this written testimony for the record.

An original copy will follow in the mail.

Northwest Conservation Act Coalition

Alliance to Save Energy
 Alternative Energy Resources Org.
 American Rivers
 Citizens Utility Board of Oregon
 Clallam/Jefferson Community
 Action Council
 Cold Springs Conservancy
 Emerald People's Utility District
 Eugene Future Power Committee
 Eugene Water and Electric Board
 Fair Electric Rates Now
 Fair Use of Snohomish Energy
 Friends of the Earth
 Golden Eagle Audubon
 Greenhouse Action
 Greenpeace
 Human Resources Council
 Idaho Citizens Network
 Idaho Conservation League
 Idaho Consumer Affairs
 Idaho Rivers United
 Idaho Wildlife Federation
 Kootenai-Okanagan Electric
 Consumers Association
 League of Women Voters - ID
 League of Women Voters - OR
 League of Women Voters - WA
 Mason PUD #1
 Mason PUD #3
 Metrolink YNCA
 Montana Environmental
 Information Center
 The Mountaineers
 Natural Resources Defense Council
 Northern Plains Resources Council
 Northwest Resource Information Center
 Olympic Renewable Resources Assoc.
 The Opportunity Council
 Oregon Ecumenical Center for
 Environmental Action
 Oregon Environmental Council
 Oregon Fair Share
 Oregon Student Public Interest
 Research Group
 Portland Energy Conservation, Inc.
 Rivers Council of Washington
 Rocky Mountain Institute
 Sacramento Municipal Utility District
 Salem Electric Cooperative
 Salmon For All
 Seattle Audubon Society
 Sierra Club
 Sierra Club of Western Canada
 Housing Authority of Skagit Co
 Snohomish County PUD
 Solar Energy Association of Oregon
 Solar Information Center
 The Solutions Group
 Spokane Neighborhood
 Action Program
 Tahoma Audubon Society
 Tennessee Valley Energy
 Reform Coalition
 Union of Concerned Scientists
 Washington State Assoc. of
 Community Action Agencies
 Washington Environmental Council
 Washington Wilderness Coalition
 Washington Public Interest
 Research Group
 Yakima Valley Opportunities
 Industrialization Center
 Associates
 City of Ashland
 Clark Public Utilities
 Kenetech/Windpower
 Northwest Natural Gas
 Puget Sound Power & Light
 R. Lynette & Associates
 Washington Department of
 Community Development
 Washington Natural Gas
 Washington Water Power

March 13, 1997

Gerry Devlin, Chairman
 Taxation Committee
 Montana State Senate
 Helena, MT

Dear Mr. Chairman:

The Northwest Conservation Act Coalition (NCAC) is a coalition of 75 organizations in Montana, Idaho, Oregon and Washington. Our members range from environmental and consumer protection groups to energy efficiency businesses and utilities. In Montana, our members include the Alternative Energy Resources Organization, Human Resource Council, Missoula Urban Demonstration Project, Montana Environmental Information Center, Montana Rivers Action Network, Montana Public Interest Research Group, National Center for Appropriate Technology, and the Northern Plains Resource Council. NCAC opposes SB390, the Electric Utility Industry Restructuring and Customer Choice Act, as presently drafted.

Montana and the region as a whole need a careful transition to competitive electric markets if we are to maintain economic fairness, reliable service and a healthy environment. You are in the process of developing the rules to govern the electricity industry. If the rules for this new game are not sufficient then consumers, the economy and the environment will pay the price. It is critical that we get the new rules and conditions right. Rushing through a piecemeal package that does not have state-wide consensus is not in the interest of the citizens of Montana.

After the Comprehensive Review of the Northwest Energy System was convened by Governor Racicot and the other Northwest Governors, the steering committee spent almost a year grappling with the complex set of issues involving electric utility restructuring. Many important compromises were reached between the broad parties represented at the table. Montana's interests were well represented by Bob Gannon, Bill Drummond, and John Etchart, though NCAC recognizes that some of the state's interests were not represented in the Comprehensive Review. Last December, NCAC joined with Governor Racicot in praising the work of the steering committee and firmly supporting the fundamental principles established for public purpose funding, low income energy assistance, customer choice, and consumer protection.

NCAC and its member organizations are working in all four Northwest legislatures to encourage adoption of comprehensive legislation that reflects the compromise agreements of the Comprehensive Review. Absent a thorough approach to restructuring, NCAC supports establishing a study task force to develop mechanisms to implement the recommendations of the Comprehensive Review.

SB390 deviates significantly from the recommendations of the Comprehensive Review in several important areas detailed below:

Energy Conservation, Renewable Resources and Low Income Weatherization

The transition to a more competitive electric utility industry may have the unintended consequence of shortening planning horizons and reducing incentives to invest in conservation and renewable resources. Mechanisms compatible with competition must be developed which will assure delivery of all cost effective energy conservation, provide adequate energy assistance to low-income households through weatherization and energy assistance, and secure development of non-hydro renewable energy resources to protect and enhance our environment.

SB390 establishes an annual funding level for universal system benefits programs (USBP) at 2.4% of utility annual retail sales revenues. Almost every aspect of the USBP violates the delicate compromise reached by the Comprehensive Review.

- The funding level of 2.4% is significantly below the 3.0% recommendation of the Review. NCAC believes that 3% of electric service revenues provides a level of funding adequate to the needs for conservation, renewable energy and low income weatherization in the State. NCAC proposed an optimal level of funding in the NCAC/Save Our Wild Salmon Blueprint to deliver all cost effective conservation, promote clean renewable energy and meet the needs for weatherizing low-income housing stock. That optimal level is closer to 4 1/2% of regional utility revenues. We agreed to the delicate compromise at 3% because we believed it could work even if it was not optimal. The lower funding level in SB390 is NOT workable.
- The definition of programs included in the USBP includes low income energy bill assistance. After much deliberation, the Review determined that a separate funding mechanism was appropriate and warranted for addressing low income energy bill assistance needs. The Comprehensive Review did not include low-income bill assistance in its 3% minimum investment requirement. Bill assistance should not be included in the USBP unless the funding level goes above 3%.
- The bill has no accountability for the utilities, large industrials, and the direct service industries (DSIs) that ensures that the programs they run (and get USBP credit for) are cost-effective, save energy, or address low income energy needs. NCAC is a strong supporter of local control if there is accountability that ratepayer funds are being efficiently and effectively spent. USBP investments should be for conservation measures that are not being captured by the market and for the above-market costs of renewable resources. Without strong accountability requirements the USBP may be used to fund investments that would happen anyway. NCAC recommends that the Committee go beyond the reporting requirements in SB390 and establish true accountability.
- The bill calls for the USBP to terminate in July 2003. This is 5 1/2 years less than the Comprehensive Review recommends. The ten year time frame recommended maintains the commitment to investments in public purposes at least through the full transition to a more competitive industry. NCAC recommends that an evaluation and review be conducted mid-way through the ten year program. NCAC supports the Comprehensive Review recommendation that in January 2009, the legislature recommend continuation, modification, or discontinuation of the USBP. Automatic termination is unwarranted. Only after careful evaluation, should the legislature continue, revamp or repeal the USBP.

Low-Income Energy Bill Assistance (Universal Service)

Electricity is an essential service and should be affordable and universally accessible to all residential customers, especially low and fixed income citizens who may be at special risk from a competitive electricity structure. Low-income energy bill assistance programs must be maintained and enhanced to assure that low and fixed income citizens are not disadvantaged by restructuring.

As stated above, inclusion of the energy bill assistance in the USBP with no additional funding above 3% is clearly inconsistent with the Comprehensive Review recommendation. NCAC urges the Committee to establish a minimum standard of assistance and a universal service fund to ensure that the standard is achieved. All qualified low income households should be eligible to receive bill assistance or rate discounts as needed to ensure that they do not pay more than five percent of their incomes for household energy services. This program, like those included in the USBP should have accountability and reporting requirements to ensure program effectiveness.

Consumer Protection and Education

Reliable electricity service must be maintained while ensuring public health, safety, and quality of life. A smooth and orderly transition to a competitive electric industry requires an informed and involved public. The education of customers section in SB390 will not prevent the problems with an uneducated customer class that have resulted from the telephone deregulation in electricity deregulation. NCAC recommends that in addition to utility sponsored customer education programs, the state work with a broad array of interested parties to develop and implement a standard consumer education program for the entire state. NCAC has a more detailed customer education recommendation that we will provide to the Committee under separate cover.

In SB390, the Public Service Commission (PSC) is vested with the responsibility for issuing rules to protect consumers from abusive practices. NCAC believes the Attorney General's consumer protection office should be involved with making the assessment as to what additional rules should be established. The PSC and the Attorney General's office should consider the following issues: credit terms, disconnection and reconnection of service, standardized billing information, redlining and discriminatory pricing, unfair trade practices and fraud, assessment of late and other such fees, application standards for service, billing for unregulated services, and consumer privacy.

Customer Choice

A fundamental principle for NCAC in the area of consumer protection is that all customers get retail access on the same timeframe. SB390 allows large customers to get access four to six years before small residential and commercial customers. The Comprehensive Review recognized the risks to captive customers if one customer class gets access before another. NCAC recommends that all customer classes should have access at the same time - no special treatment for large customers. Also, a deliberate statement was made by the Review which links the initiation of customer choice with the funding for the USBP. NCAC supports this linkage.

Transition Costs

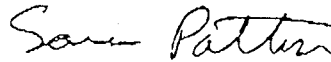
The definition of transition costs includes both net verifiable generation and supply costs that become unrecoverable due to customer choice as well as "existing generation investments and supply commitments or other obligations." [section 3(22)] The second part of this definition seems to imply that all public utility costs, whether they are above market or not, should be included as a transition cost. NCAC does not support this definition of transition costs. In addition, the categories of transition costs is open-ended and allows public utilities to include

"other transition costs as may qualify for recovery under this section." [section 12(1)(d)] This catch-all category should be eliminated from the bill such that customers know what utility investments are considered as transition costs.

SB390 states [section 12(2)(a)] that "transition costs must reflect all reasonable mitigation..." If a utility can claim that it has done all that is "reasonable" to mitigate stranded costs, then there is little incentive to control these costs if recovery is guaranteed. NCAC recommends that transition costs must reflect all "feasible" mitigation. In addition, the legislature should require the PSC to consider an equitable sharing of transition costs between public utility shareholders and their customers for investments in uneconomic power plants.

Thank you for the opportunity to provide our comments and recommendations to the Committee. NCAC has a more detailed list of recommended changes for specific subsections that we will provide to the Committee under separate cover. In order for NCAC to support SB390 we urge you to incorporate the recommendations noted in this letter and the above mentioned changes into an amended bill. Please contact Nancy Hirsh at 206-621-0094 if you have any questions or comments.

Sincerely,



Sara Patton
Coalition Director

**MONTANA SENATE
1997 LEGISLATURE
TAXATION COMMITTEE**

ROLL CALL

DATE

MARCH 3, 1997

[illegible]

SEN:1997
wp.rollcall.man
CS-09

DATE 3-13-97

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: SB 390

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Check One

Name	Representing	Bill No.	Support	Oppose
LORNA FRANK-KARN	MT. FARM BUREAU	SB 390	X	
H.G. Robinson	Nor. Elec. Corp	SB 390	X	
BETTY WADDELL	MT ASSOC. OF CHURCHES	SB 390		X
DICK PATTISON	MT SR CITIZENS	SB 390		X
ARCHIE NUNN	MT SR CITIZENS	390		X
TARA MELE	MONTPIRG	390		X
Bob Anderson	P SC	390		X
DAVID EWER	REPRESENTATIVE	390		X
Derek Birnie	MT People's Action	390		X
Patrick Judge	MEIC	390		X
David Owen	MT Chamber	390	✓	
MIKE MURPHY	MT. WATER RESOURCES ASSN	390	✓	
Russ Rittler	Wash. Corp	390	✓	
ALICE LEWIS	HRDC ASS.	390	✓	

VISITOR REGISTER

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DATE 3-13-97

SENATE COMMITTEE ON Inf

BILLS BEING HEARD TODAY: SB 390

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Check One

Name	Representing	Bill No.	Support	Oppose
Jenny Dunsell	Conoco	SB 390	X	
Ric Brown	Ravalli County Electric	SB 390	X	
John Shaw	ASARCO	SB 390	X	
Don Quander	Stone Containers	SB 390	X	
DAVE FISHER	CHAIR PSC	SB 390	X	
NEIL COLWELL	WASHINGTON WATER Pwr	SB 390	X	
LARRY NELSON	M E C A	SB 390	X	
Verner Bertelson	M S C A	SB 390		X
Warren McCortney	Flathead Electric Corp	SB 390	X	
Elizabeth A Beverly	M S C A	SB 390		X
J.D. BEVERLY	M S C A	SB 390		X
GAIL KUNTZ	BPA	SB 390	X	
ELLEN ENGSTEDT	HRDC	SB 390	X	
Harold Hansen	Tongue River Elec Corp	SB 390	X	

VISITOR REGISTER

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DATE 3-13-97

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: SB 390

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Check One

Name	Representing	Bill No.	Support	Oppose
Ron Ostberg	San River Elect	5390	X	
Larry Descheemaeker	Fergus Elect	"	X	
STEVE BALSTER	FERGUS Elec Coop	"	X	
Red Siring	Park Elect Coop	5390	X	
Arthur Davies	Beartooth Elec Coop	5390	X	
Ray E. Miller	Yellowstone Valley	5390	X	
Ch Beale	BOWNEVILLE elec	✓	X	
Bill Drummond	WESTERN MT G&T	SB 390	X	
Bob Walker	Missoula Electric Coop.	SB 390	X	
Ronald Mueller	Montana Electric Sierra Club	SB 390		X
Larry Tashner	Missoula Elec. Coop.	SB 390	X	
Bob Gannon	Mt. Power	SB 390	X	
DENNIS BURK	MT. TAXPAYERS ASSN	SB 390	✓	
Perry Cole	Montana Power	SB 390	X	

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DATE

3/13/97

SENATE COMMITTEE ON

Laxation

BILLS BEING HEARD TODAY:

SB 390

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Check One

Name	Representing	Bill No.	Support	Oppose
Deborah Smith	Natural Resources NRE Defense (Council)	390		X
Peter West	Renewable NW Project	390		X
Tom Hatten	Yellowstone Valley Electric Co-op	390	X	
Bill Horschach	Lincoln Electric Co-op	390	X	
Allen Thiessen	MONTANA ELEC. COOP	390	X	
Jim Eskridge	Sun River Electric Co.	390	X	
Larry Wiens	Montana Electric Co-ops Assn	390	X	
Marcy Argeris	Central Montana Electric Co-op	390	X	
Tim Gregori	Big Horn Electric Co-op	390	X	
Dave Alberi	Vigilante EL. COOP	390	X	
Doug Hardy	PARK RL. COOP	390		
Dave Wheelihan	Montana Electric Co-op Assn	390	X	
Michael Henry	Lincoln Electric Co-op	390	X	
Jeanne Barnard	Big Flat Electric Co-op	390	X	

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DATE 3/13/97

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: SB ~~350~~ 390

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Dr. Russell B Hill	MT Trial Lawyers	SB 390		✓
Ted Lange.	APRC	SB 390		✓
Dorothea Bertelsen	Self	SB 390		✓
James E Todd	The Univ of Montana	SB 390	✓	
DAVID DITTL OFF	MT AUDUBON	SB 390		✓ AMEND

VISITOR REGISTER

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MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on March 21, 1997, at 8:00 A.M., in Room 415.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Mike Foster, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Mike Sprague (R)
Sen. Barry "Spook" Stang (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: Sen. Wm. E. "Bill" Glaser (R)

Members Absent: None

Staff Present: Jeff Martin, Legislative Services Division
Renée Podell, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 395, 3/17/97
HJR 2, 3/17/97
HB 566, 3/17/97
Executive Action: SB 390

HEARING ON SB 395

Sponsor: SEN. DALE MAHLUM, SD 35, Missoula

Proponents: Candace Torgeson, Montana Car Rental Assoc.
Steve Costley, Montana Car Rental Assoc.
Dale G. Duff, Rocky Mountain Transportation
Rob Doyle, Avis Rent-A-Car
Mike Lucero, Hertz Rent-A-Car
Margaret Hartman, Hertz Rent-A-Car
Wayne Stotts, Hertz Rent-A-Car
Bruce Bradford, Budget Rent-A-Car
Andy Wilcox, National Car Rental
Verner Bertleson, citizen
Mona Jamison, National Trust Historic Preservation

SEN. DE PRATU asked if the \$250,000 on a life insurance policy would be in addition to the \$600,000 of the estate that would be transferrable?

Mr. Hopgood commented that the \$600,000 figure goes to the federal estate tax. This bill deals with the state tax.

SEN. ECK expressed a concern that Montana's estate tax is closely tied to the federal. Could this be extended to the amount of the federal estate tax?

Mr. Hopgood explained that under the federal estate tax law, there is an unlimited deduction for transfers to a spouse. In Montana there is an unlimited deduction or credit for transfers to a spouse or to lineal decedents. Under the federal law there is a \$600,000 limit on transfers to anyone except the spouse. In Montana the tax varies with the degree of relationship to persons other than the lineal decedents or your spouse. This bill would apply only to collateral heirs, such as brothers, sisters, aunts, uncles, etc.

SEN. VAN VALKENBURG asked if there has been no change in this law for 50 years?

Ms. Bryson stated that was correct.

SEN. VAN VALKENBURG asked if there was a good public policy reason to tax any insurance proceeds as part of the inheritance tax?

Ms. Bryson stated that is a policy decision and it has been applied in the past because it is considered a part of the estate.

Closing by Sponsor:

REP. MENAHAN stated this would help adopted children.

EXECUTIVE ACTION ON SB 390

Motion: SEN. FOSTER MOVED SB 390 DO PASS.

Amendments: sb039007.ate - EXHIBIT 9

Motion: SEN. FOSTER MOVED SB 390 BE AMENDED.

Discussion: SEN. FOSTER explained this would extend the freeze for two additional years for residential and commercial customers.

The amendments start on page 18 in the grey bill. On the regular bill they would start on page 11.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Amendments: sb039005.ate - EXHIBIT 10

Motion: SEN. FOSTER MOVED TO FURTHER AMEND SB 390.

Discussion: SEN. FOSTER remarked these amendments were requested by SEN. THOMAS and reflect the testimony and concerns raised by the Governor's Office. There are 67 items in this set of amendments.

Todd Everts, Staff Attorney for Legislative Services and Director of Environmental Quality Council, explained the amendments. Thirty-one of the amendments are technical or non-substantive amendments.

Amendment no. 1 is substantive in that it amends the legislative policy and balances the interests of Montana consumers with the interests in maintaining the financial integrity of the utilities in the state of Montana.

Amendment no. 2 clarifies the definition of cooperative utility to mean an electric municipal utility as opposed to a water or sewer utility.

Amendment no. 3 nonsubstantive.

Amendment no. 4 is clarification that a transition bond is a bond that is issued by the Board of Investments or other transition bond issuer.

Amendment no. 5 includes within the term conservation investments made prior to the universal system and benefits charge implementation.

Amendment no. 6, page 7 of the grey bill, includes within a term of transitions costs arising from existing generation investments and supply commitments.

Amendment no. 7 is for clarification in that transition costs don't include those costs associated with any renegotiation or buy out.

Amendment no. 8, the term universal systems benefits programs includes low income energy bill assistance. This permits the approval by the commission or a local governing board for a cooperative utility.

Amendment no. 9, page 10 of the grey bill, clarifies the MDU exemption. It does not include the provisions of the Territorial Integrity Act. MDU is subject to the Act.

Amendment no. 11, expands the small utility exemption to include other sections of the act and those sections all listed in that explanation.

Amendment no. 12, page 12 of the grey bill, allows the commission to modify a final order or transition plan as opposed to just approving or denying that plan.

Amendment no. 13 is technical in nature.

Amendment no. 14, page 15 of the grey bill, allows a transition period to be extended for a class of customers.

Amendments no. 15 and no. 16 are technical.

Amendment no. 17 limits the recovery of transition costs and situations of unmitigatable costs of qualifying facility contracts including reasonable as opposed to any buy out or buy down costs.

Amendment no. 18 is technical.

Amendment no. 19, by striking "prudent or", maintains the consistency of existing statutory law and specifically, 69-3-109. Eliminating the showing by the utility to the commission that investments and power purchase contracts must be determined to be used and useful to taxpayers as opposed to the standard of prudent.

Amendment nos. 20, 21, and 22 are technical.

Amendment no. 23 provides that with the commission approval, a utility may have the ability to use incentive or retention rates.

Amendment no. 24 is not relative given passage of SEN. HARP's amendments.

Amendment nos. 25, 26, 27, 28 and 29 are technical and nonsubstantive.

Amendment no. 30, page 28 of the grey bill, clarifies that the utility payment for universal systems benefits programs should go to the universal system benefits fund.

Amendment no. 31 allows cooperative utilities to collectively pool their statewide credits to satisfy the universal systems benefits program charge.

Amendment no. 32 allows the co-ops to collectively pool their credits against both the universal system benefits charge and low income energy bill assistance.

Amendment no. 33, the result is that weatherization assistance and low income energy bill assistance are both included in the universal system benefits funding level.

Amendment no. 34 and 35 are technical.

Amendment no. 36, page 29 of the grey bill, clarifies that utility payments for the universal system benefits, if any after applying any of the credits which are allowed, should go to this universal system benefits fund.

Amendment no. 37, 38, 39, and 40 are technical.

Amendment no. 41 clarifies that in order to extend the transition period for certain customers, the commission must make a finding that a workable competition does not exist.

Amendment no. 42, 43, 44 and 45 are all technical.

Amendment no. 46, page 33 of the grey bill, clarifies that the commission may require a licensee to post a bond, should an electric supplier lack financial integrity as opposed to an electrical supplier not being able to operate.

Amendment no. 47 and 48 are technical.

Amendment no. 49, page 34 of the grey bill, clarifies that the commission can impose a penalty to revoke or suspend the license or do both.

Amendment no. 50 is nonsubstantive.

Amendment no. 51 is basically a consumer protection amendment that allows the commission to impose a penalty on an electric supplier that commits fraud or engages in deceptive practices.

Amendment no. 52, 53, and 54 are technical.

Amendment no. 55, page 38 of the grey bill, eliminates language that other members of the transition advisory committee can serve without salary or without reimbursement of expenses.

Amendment no. 56, page 41 of the grey bill, adds additional responsibility for the transition advisory committee to evaluate low income energy assistance programs.

Amendment no. 57, page 41 of the grey bill, basically states that the benefits cost savings, should it occur, the transition bonds must benefit customers.

Amendment no. 58 terminates the financing order if the bonds are not issued within four years of the issuance of that order. This amendment attempts to account for changing market conditions.

Amendment no. 59, page 42 of the grey bill, provides payback terms of transition bonds may not exceed 20 years.

Amendment no. 60 allows that once the bonds are issued, that issuance sets and determines the transition amounts which lock in the bond rating.

Amendment no. 61 is the same as amendment no. 60.

Amendment no. 62, page 43 and 44 of grey bill, restates that the Board of Investments on behalf of the state, agrees not to limit or alter fixed transition amounts, property, financing orders or any rights under obligation until the obligation is discharged.

Amendment no. 63 and 64 are technical.

Amendment no. 65 states that perfection of the security interest is valid if it is attached to a financing statement that is filed with the Secretary of State as opposed to the Public Service Commission.

Amendment no. 66 is the same as amendment no. 65.

Amendment no. 67, page 55 of the grey bill, basically states that cooperatives' property is to be used for the sole purpose of serving customers representing less than ninety-five percent of the record consumers within the incorporated limits of the city and the town greater than 3500 folks and subject to the class 9 property tax.

Questions From Committee Members and Responses:

SEN. VAN VALKENBURG, with respect to amendment no. 19, concerning transition costs, the recoverable costs are limited to those that were used and useful to ratepayers as opposed prudent or used and useful, asked if the purpose of the amendment is not only to be consistent with 69-3-109 but also to limit the recoverable cost to only that which is in the rate base as opposed to something beyond that?

SEN. FOSTER stated that was accurate. The term "used and useful" is a rate making term that the PSC uses in its examination of whether or not to allow an item or a cost into rate base. If that item is deemed not to be used and useful, then it is out.

Bob Anderson, PSC, explained that it is important to realize that this has to do with the recovery of standard costs. This language has to do with items that are not now in the rate base. They might be investments that the companies have made since the last rate case. If they come forward and ask for recovery of those investments, then this is the standard which would apply. Used and useful was the traditional rate making standard. "Used" means actually in service and providing electricity for customers. "Useful" means needed. "Prudent" is a little different. Prudent means based on what you knew at the time or should have known at the time, did you make a reasonable decision. That is more vague. The commission supports those changes.

Mr. Alke, Montana Dakota Utilities, expressed that they think "prudent or" should be left in. The reason being "used and

useful" is a rate-based standard and on the rate-based standard they use both "prudence" and "used and useful". Prudence is the only appropriate standard to apply to expense. The used and useful standard is a rate-based standard and not a expense review standard. This paragraph refers to both investments, which would be rate-based, and how to purchase contracts, which would be expense.

SEN. THOMAS stated they do not disagree with the Commissioner's explanation. They do think that it is accurate and recommend the amendment.

SEN. ECK asked why the word prudent was taken out?

SEN. THOMAS answered that it goes back to the point in time when the decision was made and on whether you knew or should have known at that time and bases it on that decision at that time. Whereas the terms "used and useful" currently would be only the things that are used and useful would be considered in transition costs. If you did something in the past that is not used and is not useful at this time, though it was a prudent decision at that time, that would not be included in these transition costs.

SEN. VAN VALKENBURG, with respect to amendment 23 regarding utilities filing tariffs that foster economic development or retention of existing customers, asked the reason for the amendment. We were basically moving to a market-based system, yet you want to give the utilities the ability to go out and give someone a better deal below market costs.

Ed Bartlett, Montana Power, stated that this particular change came as a result of discussion with the industrial customers to make it very clear that both for economic development purposes and principally for retention of existing customers who may need a special rate, that with the commission's approval, that customer from the utility could go before the commission and ask for that specific change or allowance.

SEN. VAN VALKENBURG was concerned about the special treatment aspect of this.

Mr. Bartlett didn't see it as a special treatment but as a continuation of PSC authority and practice in the past.

Commissioner Anderson stated that this provision did not belong here, not because it is not good practice. As long as a customer is not subsidized by other customers, that is, pays its expenses and contributes to the fixed costs of the system, then they can consider a special rate for a customer, usually an industrial customer, for the purpose of economic development or retaining that customer on the system. It doesn't fit in this paragraph. This paragraph has to do with changing the payment schedule of transition costs.

Don Quander, Stone Container Corp., commented that the reason it was felt to be important to reaffirm the policy is because we are setting up a new cost structure and for a company that finds itself on the edge of survival, we wanted to make sure that we did not inadvertently create the argument that the existing opportunity to make your case to the commission was being foreclosed. Why is this necessary? It is a transitional issue. Once we are full customer choice in a market, the company can go out and execute a contract with customers on such terms as it pleases. The commission won't review those as retention, incentive or otherwise. During the interim, there is still an issue of standard tariff that will be out there. It was put in this paragraph because this is where the misinterpretation or the misunderstanding might arise.

REP. DAVID EWER, HD 53, Helena, suggested the committee be nervous about the position of this. It is sandwiched in between the commission's ability to alter customer transition charges. Certain customers are being given the ability to change their schedule.

SEN. THOMAS countered that this needs to be subject to commission approval.

SEN. VAN VALKENBURG, referring to amendment no. 67, asked **SEN. THOMAS** exactly what is he doing with that amendment? He thought that the amendment allowed that if it is a town greater than 3500 people, they will move into class 9 property tax category, but if they are under 3500 in population they would not.

SEN. THOMAS explained that with changes in service in these towns and the integration of competition in utilities, existing properties would not be included in this taxation. New business would be, but not existing.

Gary Weans, Montana Electric Co-operative Assoc., further clarified that the purpose of this amendment is to make sure that existing property within towns is not taxed at 12% and that is property such as cooperative headquarters facilities which are located in the town. There are some power lines running through the town which don't serve any customers within that town.

SEN. ECK, referring to amendment no. 14, asked for an explanation of "customer classes".

SEN. THOMAS explained the amendment took out the allowance for certain customers and therefore this would leave an allowance only for groups of customers and not a particular customer. The attempt is to deal with customers in classes and not individuals.

Mr. Anderson further explained that his understanding is that the transition period ought to be consistent for all customers. When you have a market for electricity supply, it is competitive or not. It doesn't matter which customer or which customer class is

applying for that market. If there is an extension of transition period, it ought to apply to all customers and all customer classes. The term "customer class" has traditional meaning in electricity regulation. The way the classes have developed are: residential, commercial, irrigation, and industrial.

SEN. ECK, referring to amendment no. 58 - transition bonds, asked under what circumstances would transition bonds not be needed within four years?

Mr. Anderson replied that one example would be if the company chooses to ask the commission for a financing order and based on the merit, the order is granted, it is up to the utility to actually issue the bonds. Whether or not it does depends on such things as interest rates or price of electricity. There is a four year limit.

SEN. VAN VALKENBURG, referring to amendments 31 and 32 - co-ops being able to collectively pool their credits to satisfy the universal system benefits program, asked if all the co-ops in the state supported that concept and if that would limit any further growth or participation in universal system benefits by those who are not doing much and put the burden on the co-ops that are providing some universal system benefits.

Mr. Weans commented that all co-ops did support that concept. Collectively, they are already exceeding the threshold in the bill. With this pool, there will be accountability created amongst the co-ops so that one co-operative is not bearing a disproportionate share. The large co-ops will not tolerate the smaller co-ops not participating as far as their share.

SEN. VAN VALKENBURG asked how they would not tolerate it if the law states that those who are not doing anything get to take advantage of the fact that someone else is doing quite a bit.

Mr. Weans thought that the co-operatives are self-regulating because they are owned by the consumers.

SEN. VAN VALKENBURG asked to have amendment no. 23 segregated.

Vote: THE MOTION TO AMEND SB 390, AMENDMENTS sb039005.ate 1-22 and 24-67 CARRIED UNANIMOUSLY.

Discussion:

SEN. FOSTER assumed amendment no. 23 was segregated because of comments by Commissioner Anderson and REP. EWER.

SEN. VAN VALKENBURG added there may be an appropriate place in the bill for economic development incentives, etc., but he does not feel it is appropriate in this particular part of the bill.

Mick Robinson, Governor's Office, stated this is putting in statute was is current practice. He does not see a problem with location of the issue.

SEN. VAN VALKENBURG stated he has doubts that these kinds of special treatments are appropriate in an environment where we are moving to market rates. He questions whether we should continue a practice that the PSC may have engaged in in the past in a different environment entirely. With the placement of the language in with the transition charges we are opening up the potential for special deals. Transitional costs are huge. It would be wiser to leave it out for now.

Motion/Vote: CHAIRMAN DEVLIN MOVED TO ADOPT AMENDMENT NO. 23. THE MOTION CARRIED ON ROLL CALL VOTE with SENATORS ECK, STANG and VAN VALKENBURG voting no.

Amendments: sb039011.ate - EXHIBIT 11

Motion: SEN. FOSTER MOVED TO FURTHER AMEND SB 390

Discussion:

SEN. FOSTER explained that this amendment is in response to a matter brought up at the hearing regarding the units of the university system having a desire to be considered a single customer. The amendment would allow that to occur.

SEN. VAN VALKENBURG read the amendment to say that the U of M - Missoula, Dillon and Butte are combined together as one customer and MSU - Bozeman, Billings, Havre and Great Falls are combined together as one customer.

SEN. FOSTER stated that was not the intent.

Mr. Ebzery stated the intent was to put the entire university system together. The statute refers to the University of Montana and the Montana system and within that are the other units. The whole university system is a single unit for the purposes of this.

SEN. VAN VALKENBURG asked Mr. Ebzery who he was speaking on behalf of?

Mr. Ebzery explained he was speaking on behalf of Portland General Electric who asked him to put this together.

{Tape: 2; Side: a; Approx. Time Count: 11:12}

Mr. Robinson felt this was a good idea because it would allow the university to negotiate for power as a larger bargaining unit.

SEN. VAN VALKENBURG questioned whether it was a good idea to combine the U of M side and the MSU side for this purpose

Mr. Robinson explained that when he originally read the amendment, he did not feel it was combined into a single customer. He viewed it as two customers.

SEN. THOMAS stated that the two large campuses qualify now, this would allow them to bring the others with them.

SEN. SPRAGUE thought the language allowed for a single retail electric customer "or" consumer with a single individual load.

SEN. VAN VALKENBURG stated he originally read it as an "or". Mr. Ebzery's answer indicated that it was intended to be an "and".

SEN. ECK commented that the administrative system of each university was separate. Combining them for purpose of purchasing would need to go through the Board of Regents.

Jeff Martin thought that one way of handling it would be to divide this up into two subsections.

SEN. SPRAGUE clarified that he sees this as a rate making base of the whole for economic purposes and/or consumer with a single individual load.

Mr. Ebzery stated it was his understanding that they wanted to put the units together so they would be large enough to participate in the best situation. The intent was to put them together for size purposes so they would be a unit that would qualify. He didn't read two into it at all.

SEN. FOSTER asked Mr. Ebzery if he had communicated with the university systems?

Mr. Ebzery explained that there has been communication between counsel for the university and they provided the language. They are in support of the amendment.

Substitute Motion: SEN. VAN VALKENBURG MOVED TO AMEND THE AMENDMENT.

Discussion:

SEN. VAN VALKENBURG stated that on line 2 following the word "are" he would insert the word "each". He wants to make it clear that they are separate entities for purposes of being electrical customers. If this is not done, we will force both units to essentially be parties to something they may not want to be parties to. We are creating such a huge customer that we may be limiting the market that can supply these customers who stretch from Billings to Dillon to Great Falls. Smaller competitors would not have the opportunity to serve these customers.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Amendments: sb039013.ate - EXHIBIT 12

Motion: SEN. FOSTER MOVED TO FURTHER AMEND SB 390.

Discussion:

SEN. FOSTER explained that this amendment came from the co-operatives and had to do with preexisting contracts. This adds language which says that if there are preexisting contracts they will not be superseded.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Amendments: sb039014.ate - EXHIBIT 13

Motion: SEN. FOSTER MOVED TO FURTHER AMEND SB 390.

Discussion:

SEN. FOSTER explained that this amendment is in the penalties section of the bill. It starts at the bottom of page 20 and goes on to page 21. This is a pro-consumer amendment which gives the PSC additional authority saying that each day of a violation constitutes a separate violation. This is consumer protection.

Motion: THE MOTION CARRIED UNANIMOUSLY.

Amendments: sb039016 - EXHIBIT 14

Motion: SEN. FOSTER MOVED TO FURTHER AMEND SB 390.

Discussion:

SEN. FOSTER stated there was some question raised about who has responsibility for the bonding. This wording specifically states that it is not an indebtedness of the state of Montana. It is the responsibility of the utility.

Mr. Everts clarified this could be found in the grey bill. It is on the same page as amendment 64, that paragraph would be stricken and this paragraph inserted.

SEN. FOSTER commented that this amendment was brought by the Office of the Legislative Auditor. The language there was vague.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Amendments: sb039006.ate - EXHIBIT 15

Motion: SEN. COLE MOVED TO FURTHER AMEND SB 390.

Discussion:

SEN. COLE stated this amendment insures that utilities, including cooperatives, are given credit against the USBC threshold for their portion of the wholesale purchase costs. That is specifically for conservation, renewable resources, weatherization and low-income energy assistance. This amendment prevents any double counting of the same credit by two different utilities.

Mr. Everts explained this could be found in the grey bill on page 27, following programs except as otherwise provided . . . The amendment starts "including those portions. . .".

SEN. VAN VALKENBURG commented that the bill has a definition of universal system benefit programs at the very beginning. Why do we need something else that is not exactly the same as the definition later in the bill?

SEN. COLE clarified this was not defining but making sure that utilities, when purchasing wholesale power from another generating plant, do get benefits for it.

SEN. VAN VALKENBURG, referring to wholesale credit, asked if this needed to take place in Montana?

Gail Koontz, Bonneville Power Co., stated she was not sure. The Board would need to address this.

Mr. Anderson didn't believe the language clarified this point. The amendment does not address any double counting problem.

John Hines, NW Power Planning Council, stated the intent of this language is to prevent double counting. If a utility, such as Montana Power, has conservation programs in their rates and made a power sales contract to another utility in Montana, a co-op, what they are trying to prevent is utility A (Montana Power) getting credit as far as expenditures toward the USBC and then the co-op, because they paid in their rates to Montana Power for the power purchase, also be able to obtain a credit. There are specific areas where the State of Montana is currently investing in market transformation activities, which are the most cost effective way to influence conservation, and those have to take place at a level greater than the State of Montana. On the low income side, they want to insure that the citizens of Montana receive the funds to help them out.

Vote: THE MOTION CARRIED with **SEN. STANG**, **SEN. ECK** and **SEN. VAN VALKENBURG** voting no.

Amendments: sb039002.amc - EXHIBIT 16

Motion: **SEN. COLE** MOVED TO FURTHER AMEND SB 390.

Discussion:

SEN. COLE explained that this amendment referred to the Territory Integrity Act. This assumes that the development of service agreements only need to acquire customer contact procedures. In those cases where poles or wires need to be exchanged or transferred, this could be handled by simply using a map or determining which utility would be most logical to serve customers in an area.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Amendments: sb039009.ate - EXHIBIT 17

Motion: SEN. ECK MOVED TO FURTHER AMEND SB 390.

Discussion:

SEN. ECK commented that most of the objections in the hearing were that the rate of 2.4% be increased. This amendment would take the rate from 2.4% to 4.0%.

SEN. FOSTER stated that 2.4% is a level that was determined as a result of extensive negotiations among all of the parties involved.

SEN. COLE explained that some of the co-ops have stated that 2.4 is as high as they would be willing to go.

SEN. STANG stated that most of the testimony supported a 3.0% rate.

SEN. ECK stated the agreement on the 2.4 was with the co-ops and the other generators. The conservation and low income community never did agree to that. Co-ops are a rather small portion of the people in Montana.

REP. EWER stated that if the language was left in, there would be a race to the bottom. This is a very important amendment.

Vote: THE MOTION FAILED ON ROLL CALL VOTE.

Motion: SEN. STANG FURTHER MOVED TO AMEND SB 390.

Discussion:

SEN. STANG explained he would amend page 16, line 24, by changing 2.4 percent to 3 percent.

SEN. VAN VALKENBURG reiterated that co-ops were going to be able to pool the credits received. Changing this from 2.4 to 3 percent would make us consistent with the other states. He feels that deregulation is going to significantly increase the costs for residential customers as the subsidies come off. There is going to be a greater need for conservation and low income assistance.

SEN. STANG closed by saying that the Power Company is putting in substantially more than 3% at this time and it isn't going to hurt them. The co-ops are opposed to it. The customers of the co-op have asked him not to support the bill if this is not brought up to 3%.

SEN. ECK felt that we will be the first state with relatively low power costs to do it. The least we could do is stick with the northwest states on the 3% issue.

Vote: THE MOTION FAILED ON ROLL CALL VOTE.

Motion: SEN. ECK MOVED TO FURTHER AMEND SB 390.

SEN. ECK explained this involved the second part of sb039009.ate. This is the part that would strike subsection 13 which says the utilities in the state of Montana may not be at advantage or disadvantage. The fear is they will push down the amount that we and any neighboring states put in. She would delete section 13 on page 18 of the original bill.

Vote: THE MOTION FAILED ON ROLL CALL VOTE.

Amendments: sb039012.ate - EXHIBIT 18

Motion: SEN. VAN VALKENBURG MOVED TO FURTHER AMEND SB 390 - Amendment no. 1.

Discussion:

SEN. VAN VALKENBURG explained the amendment. The testimony from the PSC was to the effect that they do not presently have clear authority to impose an exit fee, if a customer is leaving the system. This would give the Commission the authority to establish reasonable exit fees. This would prevent someone getting out of the system before all the transition costs could be determined.

SEN. THOMAS stated they resisted the amendment. In lieu of the exit fee, they have the transition fee on everyone's bill.

Vote: THE MOTION FAILED ON ROLL CALL VOTE with SENATORS ECK, STANG and VAN VALKENBURG voting yes.

Amendments: sb039004.ate - EXHIBIT 19

Motion: SEN. VAN VALKENBURG MOVED TO FURTHER AMEND SB 390.

Discussion:

REP. EWER commented this was necessary to direct the Commission to break down the transition costs into categories that are less recoverable than others.

SEN. FOSTER opposed the amendment. He felt the PSC was given ample authority regarding transition charges.

Denise Peterson, attorney for PSC, stated that this amendment could be helpful. The transition bond section does not allow the commission to make any changes once the transition costs are determined. If the bonds are paid off, this could make a transition to lower charges.

SEN. FOSTER asked who determined the transitional charges?

Ms. Peterson explained that they were determined in two phases. They were determined first in an initial proceeding. The commission determines them. However, in the second phase, once they are determined for the transition bond financing order section, they cannot be revisited. If the amounts are paid off, there should be some ability to reduce the transition costs. That is not provided for.

Vote: THE MOTION FAILED ON ROLL CALL VOTE with SENATORS ECK, STAND and VAN VALKENBURG voting yes.

Amendments: sb039003.ate - EXHIBIT 20

Discussion:

REP. EWER asked SEN. VAN VALKENBURG to move the amendment which would strike out all the business of the bonds. The bonding mechanism provides no outside protection.

SEN. VAN VALKENBURG did not move the amendment. He disagrees with substantial portions of the bill but the bonds are an integral part of financing the transition of this process. If this strikes all of the bonding provisions, that undermines the ability to make this transition.

Motion: SEN. FOSTER MOVED SB 390 DO PASS AS AMENDED.

Discussion:

SEN. VAN VALKENBURG stated he has tried to understand the issue and balance the inevitability of electric utility deregulation with the consequences of that on Montana consumer's electricity. He admits that he doesn't think he knows enough to vote on the bill. This is an extremely complex issue. The bill was heard one week ago. They received a grey bill yesterday afternoon which they are being asked to put in place this economic earthquake which will ripple across Montana. With respect to Section 2 of the bill where the legislature makes certain findings that allows that the Montana customers should have freedom to choose their supplier of electricity and related services in a competitive market as soon as administratively feasible is not a finding he can endorse. Montana has some of the lowest electrical rates there are in the nation. He is

concerned about the circumstances of the tax system by passage of this bill. To pass this right now is a situation of haste makes waste. You can regret at your leisure what you engaged in at such a rapid pace now.

SEN. ECK emphasized the reason this bill came to the tax committee was because of the tremendous tax implications involved in what we are doing. We have all had information that warns us that we don't know very much about the tax implications. This could very well wait for another two years. The people of Montana are going to have very strong reactions when they start looking at the tax consequences.

SEN. FOSTER stated they were after balance. The bill as amended reflects the balance. They are protecting consumer interests. This bill gives the best vehicle possible to keep the rates as low as is possible. There will be tax consequences. This bill does not address taxes. The world of utility rate regulation has worked well but the world is changing in this area. We can't stop it from happening. We can pass a bill to shape a Montana solution to this matter.

V: THE MOTION CARRIED ON ROLL CALL VOTE with SENATORS ECK, STANG and VAN VALKENBURG voting no.

Amendments to Senate Bill No. 390
1st Reading Copy

Requested by Senator Harp
For the Committee on Taxation

Prepared by Todd Everts
March 18, 1997

SENATE TAXATION

DATE March 21, 1997

EXHIBIT NO. 9

BILL NO. SB 390

1. Page 11, line 28 through page 12, line 12.

Strike: subsections (6), (7), and (8) in their entirety

Insert: "(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period as follows:

(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.

(b) From July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of [section 5(1)(b)], public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, extraordinary events resulting in either:

(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) portions of the increase or decrease in the annual state and local property tax expense that are greater than the payment or adjustment that results from applying the industry-recognized rates of inflation to the increase or decrease in the state and local property tax expense reflected in rates as of [the effective date of this act].

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under [section 31] toward the rate moratorium pursuant to subsection

(6).

(10) Public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes."

Renumber: subsequent subsections

2. Page 12, lines 15 and 16.

Strike: subsection (10) in its entirety

Amendments to Senate Bill No. 390
1st Reading Copy

Requested by Senator Thomas
For the Committee on Taxation

Prepared by Todd Everts
March 13, 1997

SENATE TAXATION
DATE March 21, 1997
EXHIBIT NO. 10
BILL NO. SB 390

1. Page 1, line 27.
Following: "fostered"
Insert: "while recognizing the interests of Montana consumers"
2. Page 2, line 27.
Following: "municipal"
Insert: "electric"
3. Page 3, line 30.
Strike: "by"
Insert: "on"
4. Page 4, line 10.
Following: "ownership"
Insert: "issued by the board or other transition bonds issuer"
5. Page 4, line 24.
Following: "plan"
Insert: "and conservation investments made prior to universal
system benefits charge implementation"
6. Page 4, line 27.
Following: "act]"
Insert: "and costs arising from these investments and
commitments"
7. Page 4, line 28.
Following: "with"
Strike: "any"
8. Page 5, line 30.
Strike: "as" through "commission"
9. Page 7, line 6.
Strike: "section"
Insert: "sections"
Insert: " 22 and 34 through 44"
10. Page 7, line 9.
Strike: "section"
Insert: "[sections 1 through 31]"
11. Page 7, line 15.
Following: "sections 4,"
Insert: "6 through 12,"

12. Page 7, line 27.
Following: "approving"
Insert: ", modifying,"

13. Page 9, line 3.
Following: "with"
Insert: "a code of conduct consistent with"

14. Page 10, line 2.
Strike: "for certain customers"

15. Page 10, line 6.
Strike: "."
Insert: "; and"

16. Page 10, line 7.
Strike: "(4) A tracking"
Insert: "(c) use a "
Strike: "must be used"
Strike: "to"
Insert: "that"

17. Page 10, line 15.
Following: "including"
Strike: "any"
Insert: "reasonable"

18. Page 11, line 4.
Strike: "professions"
Insert: "professionals"

19. Page 11, line 7.
Strike: "prudent or"

20. Page 11, line 14.
Following: "from"
Insert: "customers for"

21. Page 11, lines 15 and 16.
Strike: "customers with"
Following: "new"
Insert: "or additional"
Strike: "connected" on line 15 through "facilities" on line 16
Insert: "first served by the public utility"

22. Page 11, line 17.
Strike: "customers" through "use"
Insert: "loads served by that customer's own generation"

23. Page 11, line 19.
Following: "schedule."
Insert: "Public utilities may file with the commission, tariffs
for electric service rates that foster economic development
or retention of existing customers within the state,
including generally available rate schedules."

24. Page 12, lines 9 and 10.

Strike: the second "transition" on line 9 through "and" on line 10

25. Page 16, line 24.

Strike: "On or after"

Insert: "Beginning"

26. Page 16, line 28.

Strike: "(3)"

Insert: "(a)"

ReNUMBER: subsequent subsections

27. Page 17, line 1.

Strike: "(4)"

Insert: "(b)"

ReNUMBER: subsequent subsections.

28. Page 17, line 3.

Strike: "(12)"

Insert: "(7)"

29. Page 17, line 4.

Strike: "(5)"

Insert: "(c)"

ReNUMBER: subsequent subsections

30. Page 17, line 5.

Following: "payment"

Insert: "to the universal system benefits fund"

31. Page 17, line 6.

Following: "may"

Insert: "collectively"

32. Page 17, line 7.

Strike: "or"

Insert: "and"

33. Page 17, line 11.

Following: "bill"

Insert: "and weatherization"

34. Page 17, line 14.

Strike: "(9)"

Insert: "(a)"

Strike: "bill"

ReNUMBER: subsequent subsections

35. Page 17, line 16.

Strike: "(10)"

Insert: "(b)"

ReNUMBER: subsequent subsections

36. Page 17, line 17.

Following: "difference"

Insert: "to the universal energy bill assistance fund"

37. Page 17, line 22.

Following: "pay"

Insert: "a universal system benefits program charge equal to"

38. Page 17, line 23.

Strike: "net of"

Insert: "less"

Strike: "(12)"

Insert: "(7)"

39. Page 17, line 25.

Strike: "net of"

Insert: "less"

Strike: "(12)"

Insert: "(7)"

40. Page 18, line 28.

Strike: "do not have a choice of"

Insert: "have not chosen an"

41. Page 19, line 1.

Following: "because"

Insert: "the commission finds that"

42. Page 19, line 2.

Following: "shall"

Insert: "continue to"

Following: "regulate"

Insert: "the provision of electricity supply by"

43. Page 19, line 3.

Strike: "9"

Insert: "11"

44. Page 19, line 5.

Following: "whether"

Insert: "competition is"

Strike: "price elasticity of demand exists in the electricity
supply market"

45. Page 20, line 7.

Strike: "supplier"

Insert: "supplier's"

46. Page 20, line 15.

Strike: "if"

Insert: "should"

Strike: "fails"

Insert: "fail"

Strike: "is not operating"

Insert: "lack financial integrity"

47. Page 20, line 24.

Strike: "normally"

48. Page 20, line 25.

Strike: "traditional"

Insert: "electric facilities"

Strike: "normally"

49. Page 20, line 29.

Strike: "either impose a penalty or"

Following: "supplier"

Insert: ", impose a penalty, or both,"

50. Page 21, line 4.

Strike: "or"

51. Page 21, line 5.

Following: "Montana"

Strike: "."

Insert: "; or (d) committed fraud or engaged in deceptive practices."

52. Page 21, line 16.

Strike: "The electrical bill"

Insert: "Electrical bills"

Strike: "is"

Insert: "are"

53. Page 22, line 22.

Strike: "council"

Insert: "counsel committee"

54. Page 23, line 3.

Strike: "of"

Insert: "from a"

Strike: "consumers"

Insert: "program provider"

55. Page 23, lines 7 and 8.

Strike: "Other" on line 7 through "expenses." on line 8

56. Page 25.

Following: line 2

Insert: "(17) On or before November 1, 1998, the transition advisory committee shall make recommendations to the governor and the legislature regarding the provision of low-income energy assistance programs in Montana by all energy providers."

57. Page 25, line 15.

Following: "bonds."

Insert: "If transition bonds are issued, cost savings associated with and resulting from the bonds must benefit customers."

58. Page 25, line 17.

Following: "issuance."

Insert: "If transition bonds are not issued within 4 years of the issuance of the financing order the financing order must terminate. The utility may apply for an extension or renewal of a financing order."

59. Page 25, line 28.

Following: "order."

Insert: "The order must set forth the term over which the transition bonds are to be paid, but those terms may not exceed 20 years."

60. Page 26, line 2.

Following: "bonds"

Insert: "and upon the issuance of transition bonds"

61. Page 26, line 4.

Strike: "The"

Insert: "If transition bonds have been issued, the"

62. Page 26, line 15.

Following: "discharged."

Insert: "The board, as agent for the state, is authorized to include this pledge and undertaking for the state in these obligations."

63. Page 26, line 26.

Following: "contain"

Insert: "on their face"

64. Page 26, line 29.

Strike: "security"

Insert: "bond"

65. Page 28, line 27.

Strike: "commission"

Insert: "secretary of state"

66. Page 28, line 28.

Strike: "commission"

Insert: "secretary of state"

67. Page 33, line 8.

Strike: "properties of"

Strike: "cooperatives"

Insert: "cooperatives' property used for the sole purpose of"

Following: "serving"

Insert: "customers representing"

Amendments to Senate Bill No. 390
1st Reading Copy

Requested by Senator Foster
For the Committee on Taxation

Prepared by Todd Everts
March 19, 1997

SENATE TAXATION

DATE March 31, 1997

EXHIBIT NO. 11

BILL NO. SB 390

1. Page 2, line 30.

Following: "consumer."

Insert: "The university of Montana, pursuant to 20-25-201(1), and
Montana state university, pursuant to 20-25-201(2), are
considered a single retail electric customer or consumer
with a single individual load."

Amendments to Senate Bill No. 390
1st Reading Copy

Requested by Senator Foster
For the Committee on Taxation

Prepared by Todd Everts
March 20, 1997

SENATE TAXATION

DATE March 21, 1997

EXHIBIT NO. 12

BILL NO. SB 390

1. Page 16, line 15.

Following: "facilities"

Insert: "unless preexisting contracts exist"

Amendments to Senate Bill No. 390
1st Reading Copy

SENATE TAXATION

Requested by Senator Foster DATE March 21, 1997
For the Committee on Taxation

EXHIBIT NO. 13

Prepared by Todd Everts
March 20, 1997

BILL NO. SB 390

1. Page 21, line 8.

Following: "suspension."

Insert: "Each day of each violation constitutes a separate
violation."

Amendments to Senate Bill No. 390 ^{SENATE TAXATION}
1st Reading Copy

Requested by Senator Foster
For the Committee on Taxation

DATE March 31, 1997
EXHIBIT NO. 14
BILL NO. SB 390

Prepared by Todd Everts
March 20, 1997

1. Page 26, lines 28 and 29.

Strike: "Neither" on line 28 through "security." on line 29

Insert: "This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any political subdivision of the state of Montana within any constitutional or statutory provision. Neither the full faith and credit nor the taxing power of the state of Montana is pledged to the payment of the principal or interest on this bond, and neither the state of Montana nor any political subdivision of the state of Montana is obligated, directly, indirectly, or contingently, to levy or to pledge any form of taxation or to make any appropriation for the payment of this bond. This bond is a limited obligation of the issuer, payable solely out of the transition property or the proceeds of that property specifically pledged for its payment and not otherwise."

Amendments to Senate Bill No. 390
1st Reading Copy

Requested by Senator Cole
For the Committee on Taxation

Prepared by Todd Everts
March 17, 1997

SENATE TAXATION

DATE March 31, 1997

EXHIBIT NO. 15

BILL NO. SB 390

1. Page 17, line 1.

Following: "(4)"

Insert: "(a)"

2. Page 17, line 2.

Following: "universal system benefits programs"

Insert: ", including those portions of expenditures for the
purchase of power that are for the acquisition or support of
renewable energy, conservation-related activities, or low-
income energy bill assistance,"

3. Page 17.

Following: line 3

Insert: "(b) A utility at which the sale of power for final end-
use occurs is the utility that receives credit for the
universal system benefits program expenditure.

(c) For a utility to receive credit for low-income related
expenditures, the activity must have taken place in
Montana."

Amendments to Senate Bill No. 390
First Reading Copy

Requested by Sen. Cole
For the Committee on Taxation

Prepared by Martha Colhoun
March 20, 1997

SENATE TAXATION

DATE March 21, 1997

EXHIBIT NO. 16

BILL NO. SB 390

1. Page 38, line 28.
Following: ";"
Insert: "and"

2. Page 38, line 29.
Strike: ";"
Insert: "."

3. Page 38, line 30.
Following: line 29
Insert: "(2) Whenever an agreement involves the exchange or
transfer of customers within service territories, the
following must also be included with the agreement
submission:"

Renumber: subsequent subsections

4. Page 38, line 30.
Strike: "(c)"
Insert: "(a)"

5. Page 39, line 1.
Strike: "(d)"
Insert: "(b)"

6. Page 39, line 3.
Strike: "(e)"
Insert: "(c)"

Amendments to Senate Bill No. 390
1st Reading Copy

Requested by Senator Brooke
For the Committee on Taxation

Prepared by Todd Everts
March 19, 1997

SENATE TAXATION
DATE March 21, 1997
EXHIBIT NO. 17
BILL NO. SB 390

1. Page 16, lines 24 through 27.

Following: "(2)" on line 24

Strike: "On" on line 24 through "2003." on line 27

Insert: "On or after July 1, 1997, 4% of each utility's and each
electricity supplier's annually calculated revenue is the
annual funding level for universal system benefits
programs."

2. Page 18, lines 8 through 10.

Strike: subsection (13) in its entirety

Renumber: subsequent subsection

Amendments to Senate Bill No. 390
1st Reading Copy

Requested by Senator Doherty
For the Committee on Taxation

Prepared by Todd Everts
March 19, 1997

SENATE TAXATION

DATE March 21, 1997

EXHIBIT NO. 18

BILL NO. SB 390

1. Page 11, line 20.

Strike: "A separate exit fee may not be charged."

Insert: "However, the commission may set reasonable exit fees."

2. Page 16, line 24.

Strike: "2.4%"

Insert: "3%"

Strike: "retail"

Insert: "gross"

Amendments to Senate Bill No. 390
1st Reading Copy

SENATE TAXATION

DATE March 21, 1997
EXHIBIT NO. 19
BILL NO. SB 390

Requested by Rep. Ewer
For the Committee on Taxation

Prepared by Todd Everts
March 12, 1997

1. Page 32.

Following: line 13

Insert: "(25) (a) The commission shall mitigate the burden of transition charges on consumers. The commission may require that transition costs be broken down into categories of unrecoverable value pursuant to [sections 1 through 31].

(b) Different categories as established in subsection

(25) (a) may be treated differently with respect to:

(i) the amount of bonds that may be sold in any given year;

or

(ii) the total amount of bonds that may be secured by the specific category of transition costs.

(c) To further protect the consumer, the commission may require any bond issuance to be structured so that transition charges may be lowered if the bonds are repaid in full. The structural components include but are not limited to:

(i) variable rate debt;

(ii) callable debt;

(iii) provisions in contracts; or

(iv) bond indentures to provide for adjustments to transition charges if bonds are paid or refunded or a condition of defeasance is met."

Amendments to Senate Bill No. 390
1st Reading Copy

SENATE TAXATION

DATE March 26, 1997

EXHIBIT NO. 20

BILL NO. SB 390

Requested by Rep. Ewer
For the Committee on Taxation

Prepared by Todd Everts
March 12, 1997

1. Page 3, lines 9 and 10.
Strike: the second "and" on line 9 through "bonds" on line 10
2. Page 3, line 19.
Following: "order"
Strike: ", including" through "bonds"
3. Page 4, lines 7 through 12.
Strike: subsections (18) and (19) in their entirety
Renumber: subsequent subsections
4. Page 4, lines 29 and 30.
Strike: the first "and" on line 29 through "bonds" on line 30
5. Page 5, lines 2 and 3.
Strike: "for" on line 2 through "customers" on line 3
6. Page 5, line 8.
Following: "utility"
Strike: ", "
Insert: "or"
Following: "assignee"
Strike: ", or other issuer of transition bonds"
7. Page 5, line 13.
Strike: "including" through "bonds"
8. Page 10, lines 19 and 20.
Following: "plan" on line 19
Strike: ", including" through "bonds" on line 20
9. Page 10, line 29.
Strike: "through transition bonds"
10. Page 12, line 5.
Strike: "If" through "any"
Insert: "Any"
11. Page 12, line 14.
Strike: "to actual transition bonds savings"
12. Page 12, lines 15 through 16.
Strike: subsection (10) in its entirety
13. Page 25, lines 14 and 15.

Strike: "through" on line 14 through "bonds" on line 15

14. Page 25, lines 16 and 17.

Strike: the third "or" on line 16 through "issuance" on line 17

15. Page 25, lines 27 and 28.

Strike: "including" on line 27 through "bonds" on line 28

16. Page 26, lines 1 through 4.

Strike: "Notwithstanding" on line 1 through "(b)" on line 4

Renumber: subsequent subsections

17. Page 26, line 13.

Strike: "and transition bondholders"

18. Page 26, line 20.

Strike: "including" through "bonds"

19. Page 26, line 26 through page 27, line 2.

Strike: "The" on page 26, line 26 through "payment." on page 27
line 2

20. Page 27, lines 16 and 17.

Strike: "or" on line 16 through "bonds" on line 17

21. Page 27, lines 18 through 20.

Strike: subsection (7) in its entirety

Renumber: subsequent subsections

22. Page 27, line 23.

Strike: "in connection with the issuance of transition bonds"

23. Page 27, lines 25 and 26.

Strike: "may" on line 25 through "and" on line 26

24. Page 27, lines 28 through 30.

Following: "of" on line 28

Strike: ":" on line 28 through "(ii)" on line 30

25. Page 28, line 4.

Strike: "(18)"

Insert: "(17)"

26. Page 29, line 8.

Strike: "for contracts securing transition bonds,"

27. Page 30, lines 8 and 9.

Strike: "in" on line 8 through "costs" on line 9

28. Page 30, lines 16 through 19.

Strike: subsection (b) in its entirety

Renumber: subsequent subsection

29. Page 30, line 20.

Strike: "(16)"

Insert: "(15)"

30. Page 31, lines 13 and 14.

Following: "be"

Strike: ", revenue" on line 13 through "bonds"

31. Page 31, lines 24 and 25.

Strike: "if" on line 24 through "bonds" on line 25

32. Page 31, lines 27 and 28.

Strike: "Transition" on line 27 through "accrued." on line 28

33. Page 32, lines 9 through 11.

Strike: subsection (23) in its entirety

Renumber: subsequent subsection

**MONTANA SENATE
1997 LEGISLATURE
TAXATION COMMITTEE
ROLL CALL VOTE**

DATE 3-21-97 BILL NO. SB 390 NUMBER _____

MOTION: Amendment 23 - adopted

3 no

[illegible]

SEN:1997
wp:rlclvote.man
CS-11

**MONTANA SENATE
1997 LEGISLATURE
TAXATION COMMITTEE
ROLL CALL VOTE**

DATE 3-21-97 BILL NO. SB 390 NUMBER

MOTION: Amendm. 39009

6-no

3- yes

[illegible]

SEN:1997
wp:rlclvote.man
CS-11

DATE 3-21-97 BILL NO. SB 390 NUMBER _____

6- no
3- yes motion fails

SEN:1997
wp:rlclvote.man
CS-11

DATE 3-21-17 BILL NO. 3B370 NUMBER _____
MOTION: 39004. ate VUB/Rep. Ewer
6-no
3-yes motion fails

SEN:1997
wp:rlclvote.man
CS-11

**MONTANA SENATE
1997 LEGISLATURE
TAXATION COMMITTEE
ROLL CALL VOTE**

DATE 3-21-97 BILL NO. SB 390 NUMBER _____

MOTION: 6-no

3-yes Sen. Eck - Part II

39009. etc

[illegible]

SEN:1997
wp:rlclvote.man
CS-11

**MONTANA SENATE
1997 LEGISLATURE
TAXATION COMMITTEE
ROLL CALL VOTE**

DATE 3-21-97 BILL NO. SB 390 NUMBER _____

MOTION: 3% Motion from Sen. Stang
6 - no
3 - yes

[illegible]

**MONTANA SENATE
1997 LEGISLATURE
TAXATION COMMITTEE
ROLL CALL VOTE**

DATE 3-21-97 BILL NO. SB 390 NUMBER _____

MOTION: D.P.A.H.

D.P.A.A.

6 yes
3 no

[illegible]

SENATE JOURNAL
SIXTY-FIFTH LEGISLATIVE DAY - MARCH 25, 1997

HB 339, as amended, concurred in as follows:

Yeas: Baer, Beck, Bishop, Brooke, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Eck, Emerson, Estrada, Foster, Franklin, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Sprague, Swysgood, Taylor, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.
Total 44

Nays: Bartlett, Benedict, Burnett, Shea, Stang.
Total 5

Absent or not voting: None.
Total 0

Excused: Gage.
Total 1

Floor
Votes

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Majority Leader Harp moved that the Senate resolve itself into the Committee of the Whole for consideration of business on second reading. Motion carried. Senator Christiaens in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 390 - Senator Doherty moved SB 390, second reading copy, be amended as follows:

1. Page 11, line 26.

Strike: "must"

Insert: "may"

Following: "charge"

Insert: " or an exit fee"

2. Page 12, lines 6 through 8.

Strike: "Transition" on line 6 through "charged." on line 8

3. Page 28, line 18 through line 7 on page 29.

Strike: "(a)" on page 28, line 18 through "(e)" on page 28, line 7

Amendment failed as follows:

Yeas: Bartlett, Brooke, Christiaens, Doherty, Eck, Franklin, Halligan, Jergeson, Lynch, McCarthy, Nelson, Shea, Stang, Van Valkenburg, Waterman, Wilson.
Total 16

Nays: Baer, Beck, Benedict, Bishop, Burnett, Cole, Crippen, Crismore, DePratu, Devlin, Emerson, Estrada,

SENATE JOURNAL
SIXTY-FIFTH LEGISLATIVE DAY - MARCH 25, 1997

Foster, Glaser, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Mahlum, McNutt, Mesaros, Miller, Mohl, Sprague, Swysgood, Taylor, Thomas, Toews, Mr. President.

Total 33

Absent or not voting: None.

Total 0

Excused: Gage.

Total 1

Senator Gage present at this time.

Senator Stang moved SB 390, second reading copy, be amended as follows:

1. Page 18, line 22.

Strike: "subsection"

Insert: "subsections (2)(a), (2)(b), and "

2. Page 18.

Following: line 23

Insert: "(a) Prior to January 1, 1999, and except as provided in subsection (7), the commission shall, after appropriate review of funding levels adopted by utilities in surrounding states, establish and determine the annual funding levels for universal system benefits programs for public utilities that may not be less than 2.4% or more than 3.18% of each public utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995.

(b) The local governing board of a cooperative utility may, except as provided in subsection (7), establish and determine the annual funding level for that cooperative utility for universal system benefits programs, as adopted by utilities in surrounding states, at not less than 2.4% or more than 3.18% of the cooperative utility's annual retail sales revenue for the calendar year ending December 31, 1995. This funding need not be specifically provided by each cooperative utility but may be pooled as provided under subsection (3)."

Renumber: subsequent subsections

3. Page 19, line 15.

Strike: "17% of the utility's annual universal system benefits funding level"

Insert: "0.18% of the utility's annual retail sales revenue"

4. Page 35.

Following: line 13

Insert: "(25) Upon the payment in full of transition bond principal and interest, the utility shall discontinue charging and collecting the competitive transition charge associated with that portion of the utility's approved transition costs."

After discussion, Senator Lynch made a substitute motion that amendments #1, #2 and #3 be segregated from amendment #4. Motion carried.

Thereupon, amendments #1, #2 and #3 failed as follows:

Yeas: Bartlett, Beck, Bishop, Brooke, Burnett, Christiaens, Doherty, Eck, Foster, Franklin, Halligan, Harp,

SENATE JOURNAL
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Jergeson, Lynch, McCarthy, Shea, Stang, Thomas, Van Valkenburg, Waterman, Wilson.

Total 21

Nays: Baer, Benedict, Cole, Crippen, Crismore, DePratu, Devlin, Emerson, Estrada, Gage, Glaser, Grosfield, Hargrove, Hertel, Holden, Jabs, Jenkins, Keating, Mahlum, McNutt, Mesaros, Miller, Mohl, Nelson, Sprague, Swysgood, Taylor, Toews, Mr. President.

Total 29

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Amendment #4 adopted as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Burnett, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Emerson, Estrada, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.

Total 48

Nays: Brooke, Eck.

Total 2

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Senator Bartlett expressed a potential conflict of interest in SB 390.

Senator Thomas moved SB 390, as amended, do pass. Motion carried as follows:

Yeas: Baer, Beck, Benedict, Burnett, Cole, Crippen, Crismore, DePratu, Devlin, Emerson, Estrada, Foster, Gage, Glaser, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Shea, Sprague, Swysgood, Taylor, Thomas, Toews, Wilson, Mr. President.

Total 37

Nays: Bartlett, Bishop, Brooke, Christiaens, Doherty, Eck, Franklin, Halligan, Jergeson, Nelson, Stang, Van Valkenburg, Waterman.

Total 13

Absent or not voting: None.

Total 0

Excused: None.

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Total 0

Senator Harp moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Aklestad in the Chair. Chairman Christiaens moved that the Committee of the Whole report be adopted. Report adopted.

MOTIONS

HB 102 - Senator Jenkins moved the Senate reconsider its action in failing to pass HB 102 on second reading the previous legislative day. Motion carried as follows:

Yeas: Baer, Benedict, Burnett, Cole, Crippen, Crismore, DePratu, Emerson, Estrada, Foster, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Shea, Sprague, Taylor, Wilson, Mr. President.

Total 30

Nays: Bartlett, Beck, Bishop, Brooke, Christiaens, Devlin, Doherty, Eck, Franklin, Gage, Glaser, Halligan, Jergeson, Nelson, Stang, Swysgood, Thomas, Toews, Van Valkenburg, Waterman.

Total 20

Absent or not voting: None.

Total 0

Excused: None.

Total 0

ANNOUNCEMENTS

Committee meetings were announced by committee chairmen.

Majority Leader Harp moved that the Senate adjourn until 1:00 p.m., Wednesday, March 26, 1997. Motion carried.

Senate adjourned at 3:38 p.m.

ROSANA SKELTON
Secretary of Senate

GARY AKLESTAD
President of the Senate

SENATE JOURNAL
SIXTY-SIXTH LEGISLATIVE DAY - MARCH 26, 1997

THIRD READING OF BILLS

The following bill having been read three several times, title and history agreed to, was disposed of in the following manner:

SB 390 passed as follows:

Yeas: Baer, Beck, Benedict, Burnett, Cole, Crippen, Crismore, DePratu, Devlin, Emerson, Estrada, Foster, Glaser, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Sprague, Swysgood, Thomas, Toews, Wilson, Mr. President.

Total 36

Nays: Bartlett, Bishop, Brooke, Christiaens, Doherty, Eck, Franklin, Gage, Halligan, Jergeson, Stang, Taylor, Van Valkenburg, Waterman.

Total 14

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Majority Leader Harp moved that the Senate resolve itself into the Committee of the Whole for consideration of business on second reading. Motion carried. Senator Hertel in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

HB 78 - Senator Sprague moved consideration of HB 78 be placed below HB 431 on the second reading board this day. Motion carried.

HB 316 - Senator Estrada moved HB 316 be concurred in. Motion carried unanimously.

HB 387 - Senator Miller moved HB 387 be concurred in. Motion failed as follows:

Yeas: Bartlett, Burnett, Christiaens, Doherty, Eck, Emerson, Estrada, Franklin, Glaser, Hertel, Jenkins, Miller, Taylor, Toews, Waterman.

Total 15

Nays: Baer, Beck, Benedict, Bishop, Brooke, Cole, Crippen, Crismore, DePratu, Devlin, Foster, Gage, Grosfield, Hargrove, Harp, Holden, Jabs, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Thomas, Van Valkenburg, Wilson, Mr. President.

Total 34

SENATE BILL NO. 390

INTRODUCED BY THOMAS, QUILICI, HARP, BERGSAGEL, SLITER, MOLNAR, BEAUDRY, MASOLO,
GRINDE, MAHLUM, MENAHAN, DEVLIN, SHEA, CHRISTIAENS, SIMPKINS, STANG, DEPRATU,
L. TAYLOR, HARRINGTON, BOOKOUT-REINICKE, STORY, OHS, PAVLOVICH, DEVANEY, JABS,
REHBEIN, KEATING, TOEWS, TROPILA, ORR, FOSTER, LYNCH, GALVIN, MCCARTHY, BECK, RYAN,
EMERSON, KITZENBERG, DEBRUYCKER, HERTEL, MILLS, GRADY, HALLIGAN, M. TAYLOR,
GROSFIELD, WILSON, NELSON, CLARK, TASH, BISHOP, BENEDICT, SPRAGUE, COLE, MOHL, ELLIS,
JENKINS, KOTTEL, WYATT, DENNY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS
FORMONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING
THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES
FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES
IN CLASS NINE PROPERTY; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104,
69-5-105, 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING
SECTION 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required because this bill provides the public service commission with
rulemaking authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 31] may be cited as the "Electric Utility
Industry Restructuring and Customer Choice Act".

NEW SECTION. Section 2. Legislative findings and policy. The legislature finds and declares the
following:

(1) The generation and sale of electricity is becoming a competitive industry.

(2) Montana customers should have the freedom to choose their supplier of electricity and related

services in a competitive market as soon as administratively feasible. Affording this opportunity serves the public interest.

(3) The financial integrity of electrical utilities should be fostered WHILE RECOGNIZING THE INTERESTS OF MONTANA CONSUMERS.

(4) The public interest requires the continued protection of consumers through:

(a) licensure of electricity suppliers;

(b) provision of information to consumers regarding electricity supply service;

(c) provision of a process for investigating and resolving complaints;

(d) continued funding for public purpose programs for:

(i) cost-effective local energy conservation;

(ii) low-income customer weatherization;

(iii) renewable resource applications;

(iv) research and development programs related to energy conservation and renewables;

(v) market transformation; and

(vi) low-income energy bill assistance;

(e) assurance of service reliability and quality; and

(f) prevention of anticompetitive and abusive activities.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 31], unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers and purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust or financing vehicle, to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or

1 intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

2 (5) "Cooperative utility" means:

3 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18;

4 (b) an existing municipal ELECTRIC utility as of [the effective date of this act]; or

5 (c) a federally owned and locally managed electric utility in the state of Montana that is operated

6 under contract between a federally recognized Indian tribe and the United States.

7 (6) "Customer" or "consumer" means a retail electric customer or consumer. THE UNIVERSITY OF

8 MONTANA, PURSUANT TO 20-25-201(1), AND MONTANA STATE UNIVERSITY, PURSUANT TO

9 20-25-201(2), ARE EACH CONSIDERED A SINGLE RETAIL ELECTRIC CUSTOMER OR CONSUMER WITH

10 A SINGLE INDIVIDUAL LOAD.

11 (7) "Distribution facilities" means those facilities by and through which electricity is received from

12 a transmission services provider and distributed to the customer and that are controlled or operated by a

13 distribution services provider.

14 (8) "Distribution services provider" means a person controlling or operating distribution facilities for

15 distribution of electricity to the public.

16 (9) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and

17 marketers' offering to sell electricity to retail customers in the state of Montana.

18 (10) "Financing order" means an order of the commission adopted in accordance with [section 31]

19 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition

20 bonds.

21 (11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not

22 limited to:

23 (i) distribution;

24 (ii) connection;

25 (iii) disconnection; and

26 (iv) termination rates and charges that are authorized by the commission in a financing order to

27 permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the

28 transition costs and acquiring transition property through a plan approved by the commission in the

29 financing order, including the costs of issuing, servicing, and retiring transition bonds.

30 (b) If requested by the utility in the utility's application for a financing order, fixed transition

1 amounts must include nonbypassable rates or charges to recover federal and state taxes in which the
2 transition cost recovery period is modified by the transactions approved in the financing order.

3 (12) "Functionally separate" means a utility's separation of the utility's electricity supply,
4 transmission, distribution, and unregulated retail energy services assets and operations.

5 (13) "Local governing body" means a local board of trustees of a rural electric cooperative.

6 (14) "Low-income customer" means those energy consumer households and families with incomes
7 at or below industry-recognized levels that qualify those consumers for low-income energy-related
8 assistance.

9 (15) "Nonbypassable rates or charges" means rates or charges approved by the commission
10 imposed ~~by~~ ON a customer to pay the customer's share of transition costs or universal system benefits
11 program costs even if the customer has physically bypassed either the utility's transmission or distribution
12 facilities.

13 (16) "Pilot program" means a program using a representative sample of residential and small
14 commercial customers to assist in developing and offering customer choice of electric supply for all
15 residential and commercial customers.

16 (17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69,
17 chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

18 (18) "Transition bondholder" means a holder of transition bonds including trustees, collateral
19 agents, and other entities acting for the benefit of that holder.

20 (19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust
21 certificate, or other evidence of indebtedness or ownership ISSUED BY THE BOARD OR OTHER
22 TRANSITION BONDS ISSUER that is secured by or payable from fixed transition amounts or transition
23 property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance
24 transition costs and to acquire transition property.

25 (20) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay
26 the customer's share of transition costs.

27 (21) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending
28 when a utility customer does not have any liability for payment of transition costs.

29 (22) "Transition costs" means:

30 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs

of capital, that become unrecoverable as a result of the implementation of [sections 1 through 31] or of federal law requiring retail open access or customer choice.

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan AND CONSERVATION INVESTMENTS MADE PRIOR TO UNIVERSAL SYSTEM BENEFITS

CHARGE IMPLEMENTATION;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before [the effective date of this act] AND COSTS ARISING FROM THESE INVESTMENTS AND COMMITMENTS;

(iv) the costs associated with ~~any~~ renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to [sections 1 through 31], during which utilities may phase in customer choice of electricity supplier.

(24) "Transition property" means the property right created by a financing order including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under [sections 1 through 31] or assignable pursuant to a financing order is only a contract right.

(25) "Transmission facilities" means those facilities that are used to provide transmission services

as determined by the federal energy regulatory commission and the commission.

(26) "Transmission services provider" means a person controlling or operating transmission facilities.

(27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

(28) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource applications, including those that capture unique social and energy system benefits or provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs;

and

(f) low-income energy bill assistance ~~as approved by the commission.~~

(29) "Utility" means any public utility or cooperative utility.

NEW SECTION. **Section 4. Pilot programs.** (1) Except as provided in [sections 5(4) and 20], beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in [section 29] on or before July 1, 2000.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for smaller customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of smaller customers;

(c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing service to smaller customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to smaller customers.

NEW SECTION. Section 5. Public utility -- transition to customer choice -- waiver. (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) (a) Except as provided for in subsection (3), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

- (i) implementation would not be administratively feasible;
- (ii) implementation would materially affect the reliability of the electric system; or
- (iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) Except as provided in ~~section~~ **SECTIONS 22 AND 34 THROUGH 44**, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River may:

(a) defer compliance with ~~this section~~ **SECTIONS 1 THROUGH 31** until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory except that the public utility shall file a transition plan pursuant to [section 6] to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

(4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of [sections 4, **6 THROUGH 12**, 22, and this section].

NEW SECTION. Section 6. Public utility -- transition plans. (1) All public utilities, pursuant to

1 [sections 1 through 31], shall submit a transition plan to the commission. Plans must be filed with the
2 commission not later than 1 year before the date by which any customers of the public utility are entitled
3 to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public
4 utilities that are required to file plans. The transition plan must demonstrate that the public utility meets
5 all the requirements of [sections 1 through 31].

6 (2) The commission shall develop a procedural schedule that includes:

7 (a) a preliminary transition plan determination including the commission's findings on whether the
8 plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

9 (b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

10 (3) Unless waived by the public utility, the commission shall issue a final order approving,
11 MODIFYING, or denying the transition plan before 9 months after the date a public utility files a plan. All
12 parties are afforded an opportunity for hearing before issuance of the final order.

13 (4) The commission shall process a request for approval of a transition plan pursuant to the
14 contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

15 (5) On approval of the plan, the commission shall enforce the public utility obligations as
16 incorporated in the plan and in the commission's final order.

17
18 NEW SECTION. **Section 7. Public utility -- customer choice -- continued service -- education of**
19 **customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines
20 established in [section 5]. Public utilities shall propose a method for customers to choose an electricity
21 supplier.

22 (2) If a customer has not chosen an electricity supplier by the end of the transition period, a public
23 utility shall propose a method in the public utility's transition plans for assigning that customer to an
24 electricity supplier.

25 (3) A public utility may phase in customer choice to promote the orderly transition to a competitive
26 market environment pursuant to the deadlines in [section 5].

27 (4) Public utilities shall educate their customers about customer choice so that customers may make
28 an informed choice of an electricity supplier. This education process must give special emphasis to
29 education efforts during the transition period.

NEW SECTION. Section 8. Public utility -- functional separation, divestiture, and nondiscrimination.

(1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

(2) The commission may not order a public utility to divest itself of any generation assets or prohibit a public utility from divesting itself voluntarily of any generation assets.

(3) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

(4) The provisions of this section are satisfied if the public utility adopts and complies with A CODE OF CONDUCT CONSISTENT WITH federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

NEW SECTION. Section 9. Public utility -- distribution services. (1) A public utility's distribution

services provider shall:

(a) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) When a distribution services provider acts as an emergency supplier of electricity and related services to customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider at the higher of a multiple of the cost or a multiple of the then existing market rate for that electricity. The commission shall determine and authorize the multiple used. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the

1 distribution services provider provided the emergency supply. A distribution services provider is not
2 required to purchase any reserve supply of electricity to fulfill this obligation.

3
4 **NEW SECTION. Section 10. Public utilities -- transmission services.** For transmission services
5 regulated by the commission, public utilities, through filed tariffs, shall make transmission services available
6 for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and
7 by customers.

8
9 **NEW SECTION. Section 11. Public utilities -- electricity supply.** (1) On the effective date of a
10 commission order implementing a public utility's transition plan pursuant to [section 6], the public utility
11 shall remove its generation assets from the rate base.

12 (2) During the transition period, the commission may establish cost-based prices for electricity
13 supply service for customers that do not have a choice of electricity supply service or that have not yet
14 chosen an electricity supplier.

15 (3) If the transition period is extended ~~for certain customers~~, then the customers' distribution
16 services provider shall:

17 (a) extend any cost-based contract with the distribution services provider's affiliate supplier for a
18 term not more than 3 years; or

19 (b) purchase electricity from the market; AND

20 ~~(4) A tracking~~ **(C) USE A** mechanism ~~must be used to recover~~ **THAT RECOVERS** electricity supply
21 costs in rates to ensure that those costs are fully recovered.

22 (5) If a public utility intends to be an electricity supplier through an unregulated division, then the
23 public utility must be licensed as an electricity supplier pursuant to [section 24].

24
25 **NEW SECTION. Section 12. Public utilities -- transition costs and charges -- rate moratorium.** (1)
26 Subject to the provisions of this section, the commission shall allow recovery of the following categories
27 of transition costs:

28 (a) the unmitigable costs of qualifying facility contracts, including ~~any~~ **REASONABLE** buyout or
29 buydown costs, for which the contract price of generation is above the market price for generation;

30 (b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist

1 because of current regulatory practices and that can be accounted for up to the effective date of the
2 commission's final order regarding a public utility's transition plan, including costs, expenses, and
3 reasonable fees related to issuing of transition bonds;

4 (c) The unmitigable transition costs related to public utility-owned generation and other power
5 purchase contracts, except that recovery of those costs is limited to the amount accruing during the first
6 4 years after the commission enters an order pursuant to [section 6(3)]; and

7 (d) other transition costs as may qualify for recovery under this section.

8 (2) Transition costs as determined by the commission upon an affirmative showing by a public utility
9 must meet the following requirements:

10 (a) Transition costs must reflect all reasonable mitigation by the public utility, including but not
11 limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing
12 through transition bonds.

13 (b) The value of all generation-related assets and liabilities and electricity supply costs must be
14 reasonably demonstrable and must be considered on a net basis, and methods for determining value must
15 include but are not limited to:

16 (i) estimating future market values of electricity and ancillary services provided by the assets;

17 (ii) appraisal by independent third-party ~~professions~~ PROFESSIONALS; and

18 (iii) a competitive bid sale.

19 (c) Investments and power purchase contracts must have been previously allowed in rates or, if not
20 previously in rates, must be determined to be ~~prudent~~ or used and useful to ratepayers in connection with
21 the commission's approval of the utility's transition plan.

22 (d) Unless otherwise provided for in [sections 1 through 31], only costs related to existing
23 investments and power purchase contracts identified in subsection (2)(c) and costs arising from those
24 investments and power purchase contracts may be included as transition costs.

25 (3) (a) On commission approval of the amount of a public utility's transition costs, those costs
26 must be recovered through the imposition of a transition charge.

27 (b) A transition charge may not be collected from CUSTOMERS FOR:

28 (i) ~~customers with new~~ OR ADDITIONAL loads of 1,000 kilowatts or greater that were ~~connected~~
29 ~~to either the public utility's transmission or distribution facilities~~ FIRST SERVED BY THE PUBLIC UTILITY
30 after December 31, 1996; or

1 (ii) ~~customers generating electricity for their own use~~ LOADS SERVED BY THAT CUSTOMER'S
2 OWN GENERATION.

3 (c) Subject to commission approval, a utility and a customer may agree to alter the customer's
4 transition charge payment schedule. PUBLIC UTILITIES MAY FILE WITH THE COMMISSION TARIFFS FOR
5 ELECTRIC SERVICE RATES THAT FOSTER ECONOMIC DEVELOPMENT OR RETENTION OF EXISTING
6 CUSTOMERS WITHIN THE STATE, INCLUDING GENERALLY AVAILABLE RATE SCHEDULES. Transition
7 charges are the only charges that may be imposed upon a customer class to recover transition costs under
8 this section. A separate exit fee may not be charged.

9 (4) Transition charges must be imposed within a transition cost recovery period approved by the
10 commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c),
11 categories of transition costs may have varying transition cost recovery periods.

12 (5) Approval of transition costs and collection of those transition costs through transition charges
13 is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition
14 costs through any means not authorized by [sections 1 through 31] may not collect transition charges with
15 respect to these transition costs.

16 ~~(6) Public utilities may not charge rates or collect costs, which include costs reallocated to transition~~
17 ~~costs, at a level higher than the public utility would reasonably expect to recover in rates had the current~~
18 ~~regulatory system remained intact, with the exception of:~~

19 ~~(a) increased costs related to universal system benefits charges greater than those currently~~
20 ~~included in rates; and~~

21 ~~(b) increased costs necessary to implement full customer choice, including but not limited to~~
22 ~~metering, billing, and technology from those customers on whose behalf those increased costs are incurred.~~

23 ~~(7) If transition bonds are authorized pursuant to [section 31], any savings, net of consolidated tax~~
24 ~~impacts, must be used to fund a partial or full rate moratorium for 2 years during the transition period~~
25 ~~except as provided in [section 6], to the extent possible to fund transition costs mitigation or shortened~~
26 ~~transition cost recovery periods.~~

27 ~~(8) A public utility shall address in the public utility's transition plan reasonable transition~~
28 ~~bond-related rate moratorium and transition costs adjustment opportunities that may exist for the benefit~~
29 ~~of customers. The transition plan may include proposed provisions for rate adjustments due to~~
30 ~~extraordinary events during the same time period.~~

1 (6) EXCEPT AS PROVIDED IN SUBSECTION (7), PUBLIC UTILITIES SHALL IMPLEMENT A RATE
2 MORATORIUM DURING THE TRANSITION PERIOD AS FOLLOWS:

3 (A) FROM JULY 1, 1998, THROUGH JUNE 30, 2000, PUBLIC UTILITIES MAY NOT CHARGE RATES
4 HIGHER THAN THOSE RATES IN EFFECT ON JULY 1, 1998.

5 (B) FROM JULY 1, 2000, THROUGH JUNE 30, 2002, AND ONLY FOR THOSE CUSTOMERS
6 SUBJECT TO THE PROVISIONS OF [SECTION 5(1)(B)], PUBLIC UTILITIES MAY NOT INCREASE THAT
7 INCREMENT OF RATES NORMALLY ALLOCATED TO ELECTRIC SUPPLY-RELATED COSTS ABOVE THE
8 INCREMENT ASSOCIATED WITH ELECTRIC SUPPLY-RELATED COSTS REFLECTED IN RATES IN EFFECT
9 ON JULY 1, 1998. BEGINNING ON JULY 1, 2000, PUBLIC UTILITIES MAY PROPOSE INCREASES TO
10 THOSE INCREMENTS OF RATES NORMALLY ALLOCATED TO TRANSMISSION AND DISTRIBUTION
11 COSTS.

12 (7) EXCEPTED FROM THE PROVISIONS OF SUBSECTION (6) ARE:

13 (A) INCREASED COSTS RELATED TO UNIVERSAL SYSTEM BENEFITS PROGRAMS GREATER THAN
14 THOSE CURRENTLY IN RATES, INCLUDING THE TREATMENT OF UNIVERSAL SYSTEM BENEFITS
15 PROGRAM COSTS AS AN EXPENSE;

16 (B) INCREASED COSTS NECESSARY TO IMPLEMENT FULL CUSTOMER CHOICE, INCLUDING BUT
17 NOT LIMITED TO METERING, BILLING, AND TECHNOLOGY. THOSE COSTS MUST BE RECOVERED FROM
18 THE CUSTOMERS ON WHOSE BEHALF THE INCREASED COSTS ARE INCURRED.

19 (C) SUBJECT TO COMMISSION APPROVAL, EXTRAORDINARY EVENTS RESULTING IN EITHER:

20 (I) A 4% ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY 1, 1998, THROUGH JUNE 30,
21 2000; OR

22 (II) AN 8% POWER SUPPLY-RELATED ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY
23 1, 2000, THROUGH JUNE 30, 2002;

24 (D) PORTIONS OF THE INCREASE OR DECREASE IN THE ANNUAL STATE AND LOCAL PROPERTY
25 TAX EXPENSE THAT ARE GREATER THAN THE PAYMENT OR ADJUSTMENT THAT RESULTS FROM
26 APPLYING THE INDUSTRY-RECOGNIZED RATES OF INFLATION TO THE INCREASE OR DECREASE IN THE
27 STATE AND LOCAL PROPERTY TAX EXPENSE REFLECTED IN RATES AS OF [THE EFFECTIVE DATE OF
28 THIS ACT].

29 (8) NOTWITHSTANDING SUBSECTIONS (6) AND (7), DURING THE TRANSITION PERIOD, PUBLIC
30 UTILITIES MAY NOT CHARGE RATES OR COLLECT COSTS THAT INCLUDE COSTS REALLOCATED TO

1 TRANSITION COSTS AT A LEVEL HIGHER THAN THE PUBLIC UTILITY WOULD REASONABLY EXPECT TO
2 RECOVER IN RATES HAD THE CURRENT REGULATORY SYSTEM REMAINED INTACT.

3 (9) PUBLIC UTILITIES SHALL APPLY SAVINGS RESULTING UNDER [SECTION 31] TOWARD THE
4 RATE MORATORIUM PURSUANT TO SUBSECTION (6).

5 (10) PUBLIC UTILITIES MAY ACCELERATE THE AMORTIZATION OF ACCUMULATED DEFERRED
6 INVESTMENT TAX CREDITS ASSOCIATED WITH TRANSMISSION, DISTRIBUTION, AND THE GENERAL
7 PLANT AS AN ADJUSTMENT TO EARNINGS. ACCUMULATED DEFERRED INVESTMENT TAX CREDITS
8 AMORTIZED UNDER THIS SUBSECTION MAY NOT BE REFLECTED IN OPERATING INCOME FOR
9 RATEMAKING PURPOSES.

10 ~~(9)(11)~~ The commission shall issue the accounting orders necessary to align rate moratorium timing
11 and requirements to actual transition bonds savings.

12 ~~(10) If transition bonds are issued, cost savings associated with and resulting from the bonds must~~
13 ~~benefit customers.~~

14
15 **NEW SECTION. Section 13. Cooperative utility -- transition plan for customer choice.** (1) Except
16 as provided in [section 20], on or before July 1, 2001, the local governing body of a cooperative utility shall
17 adopt a transition plan.

18 (2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that
19 may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have
20 the opportunity to choose an electricity supplier.

21 (b) If after a pilot program for customers of a cooperative utility with loads less than 1,000
22 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not
23 developed, then the transition plan may be altered by the cooperative utility's governing body for those
24 customers.

25 (3) [Sections 1 through 31] do not require the cooperative utility to divest itself of any generation,
26 transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those
27 assets.

28 (4) A cooperative utility's local governing body shall certify to the commission that the local
29 governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative
30 utility shall provide to the commission documentation that the cooperative utility's transition plan is

1 consistent with [sections 1 through 31].

2

3 **NEW SECTION. Section 14. Cooperative utility -- customer choice -- education of customers --**
4 **continued service.** (1) Except as provided in [section 20], cooperative utilities shall propose a method for
5 cooperative utility customers to choose an electricity supplier.

6 (2) Customer choice may be phased in to promote the orderly transition to a competitive market
7 environment.

8 (3) Cooperative utilities shall educate their customers about customer choice so that customers may
9 make an informed choice of an electricity supplier. This education process must give special emphasis to
10 education efforts during the transition period.

11 (4) If a cooperative utility customer has not chosen an electricity supplier by the end of the
12 transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity
13 supplier designated by the cooperative utility.

14

15 **NEW SECTION. Section 15. Cooperative utility -- functional separation.** (1) To the extent that a
16 cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the
17 cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets
18 and operations in the state of Montana. If the cooperative utility intends to exercise this option, the
19 cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

20 (2) A cooperative utility shall describe in the transition plan measures taken by the cooperative
21 utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and
22 in favor of the cooperative utility's affiliates, if any.

23 (3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory
24 commission's code of conduct established in 18 CFR, part 37.

25

26 **NEW SECTION. Section 16. Cooperative utility -- distribution services.** (1) A cooperative utility
27 transition plan must include distribution facility tariffs that must be established by the cooperative utility's
28 local governing body and must include the obligation for the cooperative utility to:

29 (a) make distribution services available to all electricity suppliers, transmission services providers,
30 and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) If a distribution services provider acts as an emergency supplier of electricity and related services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual obligations shall reimburse the distribution services provider at an amount to be set by the local governing body but may not exceed the higher of a multiple of the cost or a multiple of the then existing market rate for that electricity. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

(3) Recoverable costs for cooperative utilities must be based upon standard financial reporting statements and may reflect comparable rates of return of other utilities.

NEW SECTION. Section 17. Cooperative utility -- transmission services. Transition plans must state whether the cooperative utility's transmission services, if any, are regulated by the federal energy regulatory commission. If those services are not regulated by the federal energy regulatory commission, the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers, distribution services providers, and customers. A cooperative utility's local governing body shall establish the cooperative utility's transmission tariffs.

NEW SECTION. Section 18. Cooperative utility -- electricity supply. (1) A transition plan may provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer electricity supply service. The local governing body shall establish the price for electricity supply service offered by a cooperative utility.

(2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions of [section 24].

(3) If a cooperative utility offers electricity supply service competitively to customers using a public utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar structure to serve those customers that allows the entity to be taxed at the same level as other for-profit electricity suppliers.

NEW SECTION. Section 19. Cooperative utility -- transition costs and charges. (1) For the

purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may not be recoverable as a result of the transition to a competitive market for electricity supply service.

(2) Transition costs eligible for treatment include but are not limited to:

(a) regulatory assets and deferred charges typically recoverable in rates;

(b) nonutility and utility power purchase contracts;

(c) existing commitments or obligations incurred before [the effective date of this act] and other cooperative utility investments rendered uneconomic as a result of the implementation of [sections 1 through 31] or the introduction of retail wheeling through federal legislation or regulation;

(d) costs associated with any renegotiation or buyout of the existing nonutility and utility power purchase contracts; and

(e) revenue that appears as a portion of a facility charge necessary to meet debt service requirements.

(3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall make reasonable efforts to mitigate those transition costs.

(4) Cooperative utilities may not collect any more costs, including costs reallocated to transition costs, at a level higher than would otherwise be anticipated had the current regulatory system remained intact, with the exception of:

(a) increased costs related to universal system benefits charges; and

(b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.

(5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution facilities in the receipt of electricity supply services.

(6) A cooperative utility may not collect transition costs from a customer for which the cooperative utility does not have and never has had an obligation to incur costs to provide electricity supply service unless the unmitigated transition costs were incurred solely on behalf of the customer.

(7) Approval of and collection of transition costs through a transition charge is a settlement of all transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through

any other means may not collect transition charges.

NEW SECTION. Section 20. Cooperative utility -- exemption. (1) Within 1 year after [the effective date of this act], a cooperative utility may file a notice with the commission that the cooperative utility does not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant to [section 22], a cooperative utility filing notice under this section is exempt from the provisions and requirements of [sections 1 through 31].

(2) A cooperative utility filing a notice under this section:

(a) may elect later to adopt a transition plan in accordance with [sections 1 through 31]; and

(b) may not use a public utility's distribution facilities UNLESS PREEXISTING CONTRACTS EXIST.

NEW SECTION. Section 21. Maintaining safety and reliability. Utilities shall maintain standards of safety and reliability of the electric delivery system and existing customer service requirements.

NEW SECTION. Section 22. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of energy conservation, renewable resource applications, and low-income energy bill assistance during the transition period and into the future.

(2) ~~On or after~~ BEGINNING January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal system benefits programs. Unless modified as provided in subsection ~~(4-2)~~ (7), this funding level remains in effect until July 1, 2003.

~~(3)(A)~~ (A) The recovery of all universal system benefits programs costs imposed pursuant to this section, is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

~~(4)(B)~~ (B) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, INCLUDING THOSE PORTIONS OF EXPENDITURES FOR THE PURCHASE OF POWER THAT ARE FOR THE ACQUISITION OR SUPPORT OF RENEWABLE ENERGY, CONSERVATION-RELATED ACTIVITIES, OR LOW-INCOME ENERGY BILL

1 ASSISTANCE, and for customers' programs or activities as provided in subsection ~~(42)~~ (7).

2 (C) A UTILITY AT WHICH THE SALE OF POWER FOR FINAL END-USE OCCURS IS THE UTILITY
3 THAT RECEIVES CREDIT FOR THE UNIVERSAL SYSTEM BENEFITS PROGRAM EXPENDITURE.

4 (D) FOR A UTILITY TO RECEIVE CREDIT FOR LOW-INCOME RELATED EXPENDITURES, THE
5 ACTIVITY MUST HAVE TAKEN PLACE IN MONTANA.

6 ~~(5)(E)~~ If a utility's or a customer's credit for internal activities do not satisfy the annual funding
7 provisions of subsection (2), then the utility shall make a payment TO THE UNIVERSAL SYSTEM BENEFITS
8 FUND for any difference.

9 ~~(6)(3)~~ Cooperative utilities may COLLECTIVELY pool their statewide credits to satisfy their annual
10 funding requirements for universal system benefits programs ~~or~~ AND low-income energy bill assistance.

11 ~~(7)(4)~~ A utility's transition plan must describe how the utility proposes to provide for universal
12 system benefits programs, including the methodologies, such as cost-effectiveness and need determination,
13 used to measure the utility's level of contribution to each program.

14 ~~(8)(5)~~ A utility's annual funding requirement for low-income energy bill AND WEATHERIZATION
15 assistance is established at 17% of the utility's annual universal system benefits funding level and is
16 inclusive within the overall universal system benefits funding level.

17 ~~(9)(A)~~ A utility must receive credit toward the utility's low-income energy bill assistance annual
18 funding requirement for the utility's internal low-income energy bill assistance programs or activities.

19 ~~(10)(B)~~ If a utility's credit for internal activities does not satisfy its annual funding requirement,
20 then the utility shall make a payment for any difference TO THE UNIVERSAL ENERGY BILL ASSISTANCE
21 FUND.

22 ~~(11)(6)~~ An individual customer may not bear a disproportionate share of the local utility's funding
23 requirements, and a sliding scale must be implemented to provide a more equitable distribution of program
24 costs.

25 ~~(12)(7)~~ A customer with loads greater than 1,000 kilowatts shall:

26 (a) pay A UNIVERSAL SYSTEM BENEFITS PROGRAM CHARGE EQUAL TO the lesser of:

27 (i) \$500,000 ~~not of~~ LESS the customer credits provided for in this subsection ~~(12)~~ (7); or

28 (ii) the product of .9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases,
29 ~~not of~~ LESS customer credits provided for in this subsection ~~(12)~~ (7);

30 (b) receive credit toward that customer's annual universal system benefits charge for internal

expenditures and activities that qualify as a universal system benefits program expenditure and these internal expenditures must include but not be limited to:

(i) expenditures that result in a reduction in the consumption of electrical energy in the customer's facility; and

(ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities; and

(c) customers making these expenditures must receive a credit against the customer's annual universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that customer's universal system benefits charges.

~~(13)(8)~~ A utility in the state of Montana may not be advantaged or disadvantaged in the competitive electricity supply market, including the consideration of the existence of universal system benefits programs and the comparable level of funding for those programs throughout the regions neighboring Montana.

~~(14)(9)~~ A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission and the transition advisory committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The annual report must include, but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of [sections 1 through 31];

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

NEW SECTION. Section 23. Commission authority -- rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity

1 supply may be procured during the transition period by the distribution function of a public utility for those
2 customers that ~~do not have a choice of~~ HAVE NOT CHOSEN AN electricity supplier or for those customers
3 that have not yet been assigned an electricity supplier. During the transition period, those procurements
4 may include a cost-based contract from a supply affiliate or an unregulated division.

5 (2) If the transition period is extended for certain customers because THE COMMISSION FINDS
6 THAT workable competition in the electricity supply market does not exist, then the commission shall
7 CONTINUE TO regulate THE PROVISION OF ELECTRICITY SUPPLY BY distribution services providers in
8 accordance with [section 9 (11)].

9 (3) The commission shall decide if there is workable competition in the electricity supply market by
10 determining whether COMPETITION IS sufficient ~~price elasticity of demand exists in the electricity supply~~
11 ~~market~~ to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the
12 commission may not rely solely on market share estimates.

13 (4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to
14 [section 24].

15 (5) The commission shall promulgate rules that identify the licensees and ensure that the offered
16 electricity supply is provided as offered and is adequate in terms of quality, safety and reliability.

17 (6) The commission shall establish just and reasonable rates through established ratemaking
18 principles for public utility distribution and transmission services and shall regulate these services. The
19 commission may approve rates and charges for electricity distribution and transmission services based on
20 alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public
21 utility that the alternative method complies with [sections 1 through 31], and on the public utility's
22 transition plan.

23 (7) The commission shall certify that a cooperative utility has adopted a transition plan that complies
24 with [sections 1 through 31]. A cooperative utility's transition plan is considered certified 60 days after
25 the cooperative utility files for certification.

26 (8) The commission shall promulgate rules that protect consumers, distribution services providers,
27 and electricity suppliers from anticompetitive and abusive practices.

28 (9) In addition to promulgating rules expressly provided for in [sections 1 through 31], the
29 commission may promulgate any other rules necessary to carry out the provision of [sections 1 through
30 31].

1 (10) [Sections 1 through 31] do not give the commission the authority to:

2 (a) regulate cooperative utilities in any manner other than reviewing certification filings for
3 compliance with [sections 1 through 31]; or

4 (b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1
5 through 31].

6
7 **NEW SECTION. Section 24. Licensing.** (1) Except as provided in [section 20], an electricity
8 supplier shall file an application with and obtain a license from the commission before offering electricity
9 for sale to retail customers in the state of Montana.

10 (2) As a condition of licensing, an electricity supplier shall identify and describe its business
11 activities and purposes and the business purposes of each of the electricity supplier's affiliates, including
12 whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair,
13 and nondiscriminatory access to the electricity ~~supplier~~ **SUPPLIER'S** or the electricity supplier's affiliate's
14 distribution facilities.

15 (3) The commission may require electricity suppliers that provide electricity supply service to small
16 customers to make a standard service offer that ensures that those customers have access to affordable
17 electricity.

18 (4) The commission may require:

19 (a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to
20 obtain those reserves; and

21 (b) a licensee to post a bond ~~if~~ **SHOULD** an electricity supplier ~~fails~~ **FAIL** to supply electricity or ~~is~~
22 ~~not operating~~ **LACK FINANCIAL INTEGRITY.**

23 (5) An electricity supplier shall provide the commission and all distribution services providers with
24 copies of all license applications pursuant to subsection (2). Licensees shall update information and file
25 annual reports with the commission and all distribution services providers.

26 (6) License applications are effective 30 days after filing with the commission, unless the
27 commission rejects the application during that period. If the commission rejects a license application, the
28 commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome
29 deficiencies.

30 (7) Notwithstanding [sections 1 through 31], a cooperative utility is not required to apply for a

license from the commission to be an electricity supplier to customers ~~normally~~ served by that cooperative utility in its ~~traditional~~ ELECTRIC FACILITIES service territory or to any customers ~~normally~~ served by another cooperative utility subject to the consent of the other cooperative utility's local governing body.

NEW SECTION. Section 25. Penalties -- license revocation. (1) The commission may begin a proceeding to ~~either impose a penalty or~~ revoke or suspend a license of an electricity supplier, IMPOSE A PENALTY, OR BOTH, for just cause on the commission's own investigation or upon the complaint of an affected party if it is established that the electricity supplier:

(a) intentionally provided false information to the commission;

(b) switched, or cause to be switched, the electricity supply for a customer without first obtaining the customer's written permission; ~~or~~

(c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; OR

(D) COMMITTED FRAUD OR ENGAGED IN DECEPTIVE PRACTICES.

(2) Any person selling or offering to sell electricity in this state in violation of [sections 24, 27,] and this section is subject to a fine of not less than \$100 or more than \$1,000 for the violation or a license revocation or suspension. EACH DAY OF EACH VIOLATION CONSTITUTES A SEPARATE VIOLATION.

(3) The fine must be recovered in a civil action upon the complaint by the commission in any court of competent jurisdiction.

(4) A license revocation proceeding under this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

NEW SECTION. Section 26. Bill information -- customer nonpayment -- commission rulemaking.

(1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules promulgated by the commission. ~~The electrical bill~~ ELECTRICAL BILLS must disclose but ~~is~~ ARE not limited to the following:

(a) distribution and transmission charges;

(b) electricity supply charges;

(c) competitive transition charges; and

(d) universal system benefits charges.

(2) The commission shall promulgate rules establishing the procedures relating to how and when

1 an electricity supplier may discontinue service to a customer because of the customer's nonpayment and
2 the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that
3 are cooperative utilities.

4 (3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities
5 regarding:

6 (a) customer nonpayment and reconnection; and

7 (b) information contained in electrical bills to consumers.

8
9 **NEW SECTION. Section 27. Unauthorized switching -- commission rulemaking.** (1) An electricity
10 supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity
11 supplier for a customer without first obtaining the customer's written permission.

12 (2) The commission shall promulgate rules establishing procedures to prevent unauthorized
13 switching.

14
15 **NEW SECTION. Section 28. Reciprocity.** (1) Except as provided in [section 20], all electricity
16 suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable
17 opportunity to compete.

18 (2) A distribution services provider or the distribution services provider's affiliates may not use
19 another distribution services provider's facilities in the state of Montana to sell electricity to customers in
20 the state of Montana unless the first distribution services provider or the distribution services provider's
21 affiliates offers comparable and nondiscriminatory access to the distribution services provider's distribution
22 facilities.

23
24 **NEW SECTION. Section 29. Transition advisory committee.** (1) A transition advisory committee
25 on electric utility industry restructuring is created. The transition advisory committee is composed of 18
26 members who are appointed as follows:

27 (a) The speaker of the house shall appoint two members from the house of representatives.

28 (b) The president of the senate shall appoint two members from the senate.

29 (c) The director of the department of environmental quality shall appoint one department
30 representative.

(d) The legislative consumer ~~council~~ COUNSEL COMMITTEE shall appoint one representative.

(e) Two representatives of the cooperative utility industry are appointed as designated by the Montana electrical cooperative association.

(f) Two representatives selected by the public utilities in the state of Montana are appointed.

(g) One representative of the commission is appointed.

(h) The governor shall appoint the following committee members:

(i) one representative from the industrial community with an interest in the restructuring of the electric utility industry;

(ii) one representative from the nonindustrial retail electric consumer sector;

(iii) one representative from organized labor;

(iv) one representative from the community comprising environmental and conservation interests;

(v) one representative of FROM A low-income consumers PROGRAM PROVIDER;

(vi) one representative of Montana's Indian tribes; and

(vii) one representative of the electric power market industry.

(2) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(3) Legislative members are entitled to salary and expenses as provided in section 5-2-302. ~~Other members serve without salary and without reimbursement of expenses.~~

(4) The public service commission, legislative services division, and appropriate state agencies shall provide staff assistance as requested by the committee.

(5) Transition advisory committee members must be appointed within 60 days of [the effective date of this act] to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years expiring on January 1 of odd-numbered years.

(6) The governor shall appoint a transition advisory committee presiding officer.

(7) The transition advisory committee on electric utility industry restructuring must dissolve on the earlier of either the date that full transition to retail competition is completed or December 31, 2004.

(8) The transition advisory committee shall provide an annual report on the status of electric utility restructuring on or before November 1 to the governor, the speaker of the house, the president of the senate and the commission.

(9) The transition advisory committee shall meet quarterly or as often as is necessary to conduct its business.

(10) The transition advisory committee shall analyze and report on the transition to effective competition in the competitive electricity supply market. The annual report made in the year 2000 must evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include legislative recommendations, if it appears appropriate, about the best means to further encourage the development of customer choice and meaningful market access for the benefit of smaller customers. The annual report for the year 2000 must also address the need, if any, for additional consumer protection including protection from abusive or anticompetitive practices.

(11) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

(12) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

(13) The transition advisory committee shall make recommendations to the governor, regarding the implementation of statewide universal system benefits and universal energy bill assistance funds, in time to allow for those funds to be created on or before January 1, 1999. This may include recommendations regarding the assignment of an existing government agency or private nonprofit entity as the fund administrator and administration guidelines for the funds including the means by which funds may be made available for use.

(14) The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in [section 22] to coincide with the related activities of the region at that time.

(15) On or before July 1, 2002, the transition advisory committee, in coordination with the

1 commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and
2 annual funding requirements and shall make recommendations to the 58th legislature regarding the future
3 need for those programs. The determination must focus specifically on the existence of markets to provide
4 for any or all of the universal system benefits programs or whether other means for funding those programs
5 have developed. These recommendations may also address how future reevaluations will be provided for,
6 if necessary.

7 (16) On or before November 1, 2001, the transition advisory committee shall collect information
8 to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers
9 outside of the state of Montana comparable to the opportunity provided pursuant to [sections 1 through
10 31] to utilities or their affiliates located outside the state of Montana. That information must be included
11 in the report to the 58th legislature.

12 (17) ON OR BEFORE NOVEMBER 1, 1998, THE TRANSITION ADVISORY COMMITTEE SHALL
13 MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE REGARDING THE PROVISION
14 OF LOW-INCOME ENERGY ASSISTANCE PROGRAMS IN MONTANA BY ALL ENERGY PROVIDERS.
15

16 NEW SECTION. Section 30. Tax revenue analysis. (1) The revenue oversight committee, as
17 provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously
18 regulated electricity suppliers that will enter the competitive market and report to the legislature annually
19 on how revenue to the state or local government is changed by restructuring and competition.

20 (2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative
21 changes, if any, to address the establishment of comparable state and local taxation burdens on all market
22 participants in the supply of electricity. Any legislation recommended by the revenue oversight committee
23 should place comparable state and local taxation burdens upon all market participants.
24

25 NEW SECTION. Section 31. Transition costs financing. (1) A utility may, after July 1, 1997, apply
26 to the commission for a determination that certain transition costs may be recovered through the issuance
27 of transition bonds. IF TRANSITION BONDS ARE ISSUED, COST SAVINGS ASSOCIATED WITH AND
28 RESULTING FROM THE BONDS MUST BENEFIT CUSTOMERS. After the issuance of a financing order, the
29 utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition
30 property or to cause the transition bonds to be issued, including the right to defer or postpone the sale,

1 assignment, transfer, pledge, or issuance. IF TRANSITION BONDS ARE NOT ISSUED WITHIN 4 YEARS OF
2 THE ISSUANCE OF THE FINANCING ORDER, THE FINANCING ORDER MUST TERMINATE. THE UTILITY
3 MAY APPLY FOR AN EXTENSION OR RENEWAL OF A FINANCING ORDER.

4 (2) (a) The commission may issue financing orders in accordance with this section to facilitate the
5 recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition
6 property. A financing order may be adopted only upon the application of a utility and may only become
7 effective in accordance with its terms after the utility files with the commission the utility's written consent
8 to all terms and conditions of the financing order. A financing order may specify how amounts collected
9 from a customer are allocated between fixed transition amounts and other charges.

10 (b) A financing order must include, without limitation, a procedure for the expeditious approval by
11 the commission of periodic adjustments to fixed transition amounts included in the order to ensure recovery
12 of all transition costs and the costs of capital associated with the proposed recovery, reimbursement,
13 financing, or refinancing of transition costs and the acquisition of transition property including the costs
14 of issuing, servicing, and retiring the transition bonds contemplated by the financing order. THE ORDER
15 MUST SET FORTH THE TERM OVER WHICH THE TRANSITION BONDS ARE TO BE PAID, BUT THOSE
16 TERMS MAY NOT EXCEED 20 YEARS. These adjustments may not impose fixed transition amounts upon
17 customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

18 (3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section
19 with respect to transition property that has been made the basis for the issuance of transition bonds AND
20 UPON THE ISSUANCE OF TRANSITION BONDS, the financing orders and the fixed transition amounts must
21 be irrevocable.

22 (b) ~~The~~ IF TRANSITION BONDS HAVE BEEN ISSUED, THE commission may not by rescinding,
23 altering, or amending the financing order or otherwise:

24 (i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering,
25 reimbursing, financing, or refinancing the transition costs and acquiring transition property;

26 (ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

27 (iii) in any way reduce or impair the value of transition property either directly or indirectly by taking
28 fixed transition amounts into account when setting other rates for the utility.

29 (c) The amount of revenue arising with respect to the transition property may not be subject to
30 reduction, impairment, postponement, or termination.

(d) Except as otherwise provided in this section, the state pledges and agrees with the assignees and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed transition amounts, transition property, financing orders, or any right under the obligations until the obligations, together with the interest on the obligations are fully met and discharged. THE BOARD, AS AGENT FOR THE STATE, IS AUTHORIZED TO INCLUDE THIS PLEDGE AND UNDERTAKING FOR THE STATE IN THESE OBLIGATIONS.

(e) Notwithstanding any other provision of this section, the commission shall approve those adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition costs that are the subject of the pertinent financing order and the costs of capital associated with the recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision of the state if issued through the board and do not constitute a pledge of the full faith and credit of the state or any of the state's political subdivisions if issued through the board. The financing orders are payable solely from the funds provided under this section. The bonds and offering documents must contain ON THEIR FACE a statement to the following effect:

~~"Neither the full faith and credit nor the taxing power of the State of Montana is pledged to the payment of the principal of or interest on this security."~~ THIS BOND MAY NOT CONSTITUTE AN INDEBTEDNESS OR A LOAN OF CREDIT OF THE STATE OF MONTANA OR ANY POLITICAL SUBDIVISION OF THE STATE OF MONTANA WITHIN ANY CONSTITUTIONAL OR STATUTORY PROVISION. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF MONTANA IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR INTEREST ON THIS BOND, AND NEITHER THE STATE OF MONTANA NOR ANY POLITICAL SUBDIVISION OF THE STATE OF MONTANA IS OBLIGATED, DIRECTLY, INDIRECTLY, OR CONTINGENTLY, TO LEVY OR TO PLEDGE ANY FORM OF TAXATION OR TO MAKE ANY APPROPRIATION FOR THE PAYMENT OF THIS BOND. THIS BOND IS A LIMITED OBLIGATION OF THE ISSUER, PAYABLE SOLELY OUT OF THE TRANSITION PROPERTY OR THE PROCEEDS OF THAT PROPERTY SPECIFICALLY PLEDGED FOR ITS PAYMENT AND NOT OTHERWISE.

(b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate

1 the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any
2 appropriation for bond payment.

3 (5) The commission shall establish procedures for the expeditious processing of applications for
4 financing orders, including the approval or disapproval of applications within 120 days after a utility submits
5 a complete application. The commission shall provide in any financing order for a procedure for the
6 expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are
7 the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine
8 on each anniversary of the issuance of the financing order and at additional intervals as may be provided
9 for in the financing order whether the adjustments are required and shall provide for the adjustments, if
10 required, to be approved within 60 days of each anniversary of the issuance of the financing order or of
11 each additional interval provided for in the financing order.

12 (6) Fixed transition amounts become transition property when and to the extent that a financing
13 order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and
14 the transition property must thereafter continuously exist as property for all purposes with all of the rights
15 and privileges of [sections 1 through 31] for the period and to the extent provided in the financing order
16 or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages
17 on the transition bonds.

18 (7) Transition bonds may be issued upon commission approval in the pertinent financing order.
19 Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility,
20 other than the transition property as specified in the pertinent financing order.

21 (8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition
22 property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest
23 in that transition property to one or more assignees in connection with the issuance of transition bonds to
24 the extent approved in the pertinent financing order.

25 (b) A utility or an assignee may pledge transition property as collateral for transition bonds to the
26 extent approved in the pertinent financing order and may provide for a security interest in the transition
27 property as provided in this section.

28 (c) Transition property may be sold, assigned, or transferred for the benefit of:

29 (i) transition bondholders in connection with the exercise of remedies upon a default; or

30 (ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this

1 section.

2 (9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged
3 as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will,
4 subject to the utility's rights under subsection (18):

5 (i) continue to operate the utility's system and to provide service to the utility's customers;

6 (ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the
7 assignee; and

8 (iii) account for and remit these amounts to or for the account of the assignee.

9 (b) Contracting with the assignee in accordance with the commission's authorization may not impair
10 or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute
11 assignment or transfer, or a grant of a security interest, as applicable.

12 (10) Notwithstanding any other provision of law, any provision under this section or under a
13 financing order requiring that the commission take or refrain from taking action with respect to the subject
14 matter of a financing order binds the commission and any successor commission or agency exercising
15 functions similar to the commission, and the commission or any successor commission or agency may not
16 rescind, alter, or amend that requirement in a financing order.

17 (11) A pledge or any other security interest in transition property is valid, is enforceable against the
18 pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties
19 holding security interests in the transition property perfected in the manner described in this section, and
20 attaches only when all of the following have taken place:

21 (a) the commission has issued the financing order authorizing the fixed transition amounts included
22 in the transition property;

23 (b) value has been given by the pledgees of the transition property; and

24 (c) the pledgor has signed a security agreement or other financing-related agreement covering the
25 transition property.

26 (12) (a) A valid and enforceable security interest in transition property is perfected only when it has
27 attached and when a financing statement has been filed with the ~~commission~~ SECRETARY OF STATE in
28 accordance with procedures that the ~~commission~~ SECRETARY OF STATE may establish. The financing
29 statement must name the pledgor of the transition property as debtor and identify the transition property.

30 (b) Any description of the transition property is sufficient if the description refers to the financing

1 order creating the transition property.

2 (c) The commission may require other filings with respect to the security interest in accordance with
3 procedures the commission may establish, except that these filings may not affect the perfection of the
4 security interest.

5 (13) A perfected security interest in transition property is a continuously perfected security interest
6 in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or
7 proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection.
8 Transition property constitutes property for all purposes, including for contracts securing transition bonds,
9 whether or not the revenue and proceeds arising with respect to the transition property have accrued.

10 (14) (a) Subject to the terms of the security agreement covering the transition property and the
11 rights of any third parties holding security interests in the transition property perfected in the manner
12 described in this section, the validity and relative priority of a security interest created under this section
13 is not defeated or adversely affected by:

14 (i) the commingling of revenue arising with respect to the transition property with other funds of
15 the utility that is the pledgor or transferor of the transition property; or

16 (ii) any security interest of any third party in a deposit account of that utility perfected under Title
17 30, chapter 9, part 3, into which the revenue is deposited.

18 (b) Subject to the terms of the security agreement, upon compliance with the requirements of this
19 section, a pledgee of the transition property has a perfected security interest in all cash and deposit
20 accounts of the utility in which revenue arising with respect to the transition property has been commingled
21 with other funds, but the perfected security interest must be limited to an amount no greater than the
22 amount of the revenue with respect to the transition property received by the utility within 12 months
23 before any default under the security agreement or the institution of insolvency proceedings by or against
24 the utility, less payments from the revenue to the pledgees during that 12-month period.

25 (15) (a) If a default occurs under the security agreement covering the transition property, a pledgee
26 of the transition property, subject to the terms of the security agreement, has all rights and remedies of a
27 secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise
28 enforce the pledgee's security interest in the transition property, subject to the rights of any third parties
29 holding prior security interests in the transition property perfected in the manner provided in this section.

30 (b) The commission may require in the financing order creating the transition property that in the

event of default by the utility in payment of revenue arising with respect to the transition property, the commission and any successor to the commission, upon the application by a pledgee or assignee of the transition property and without limiting any other remedies available to the pledgees or transferees by reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or transferor of the transition property.

(c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the transition bonds and other costs arising under the security agreement must be remitted to the debtor or to the pledgor as provided in the security agreement.

(16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other financing of the transition property, other than for federal and state income and franchise tax purposes.

(b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must be treated as a pledge or other financing unless the governing documentation or transfer specifically states that transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the characterization of the transfer as a pledge or other financing for federal tax purposes.

(17) A sale, assignment, or other transfer of transition property may only be considered perfected as against any third person, including any judicial lien creditor, when both of the following have taken place:

(a) the financing order authorizing the fixed transition amounts included in the transition property has become effective in accordance with subsection (2); and

(b) an assignment of the transition property, in writing, has been executed and delivered to the transferee.

1 (18) (a) As between bona fide assignees of the same right for value without notice, the assignee
2 first filing a financing statement with the commission in accordance with procedures that the commission
3 may establish has priority. The financing statement must name the assignor of the transition property as
4 debtor and must identify the transition property. Any description of the transition property is sufficient if
5 the description refers to the financing order creating the transition property. The commission may require
6 the assignor or the assignee to make other filings with respect to the transfer in accordance with
7 procedures that the commission may establish, but these filings may not affect the perfection of the
8 transfer.

9 (b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other
10 insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall
11 perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same
12 extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the
13 case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged
14 to secure transition bonds.

15 (19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in
16 the definition of transition property, whether before or after the issuance of a financing order, does not
17 constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a
18 financing order, including the interest pertaining to a financing order, along with the associated transition
19 property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed
20 transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or
21 interest other than in the order and the transition property arising from the order.

22 (20) The lien under this section is enforceable against the pledgor and all third parties, including
23 judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition
24 property previously perfected in the manner described in this section if value has been given by the
25 purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security
26 interest in all revenue and proceeds arising with respect to the associated transition property, whether or
27 not revenue has been accrued. Transition property constitutes property for the purposes of contracts
28 securing transition bonds, whether or not the related revenue has accrued. The lien created under this
29 section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the
30 transition property, to the fixed transition costs, and to the financing order and any rights created by the

1 order or any proceeds of the order. The relative priority of a lien created under this section is not defeated
2 or adversely affected by changes to the financing order or to the fixed transition amounts payable by any
3 customer.

4 (21) The commission shall establish and maintain a separate system of records to reflect the date
5 and time of receipt of all filings made under this section and may provide that transfers of transition
6 property to an assignee be filed in accordance with the same system.

7 (22) Any sale, assignment, or other transfer of transition property or any pledge of transition
8 property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

9 (23) The transition bonds issued under [sections 1 through 31] are exempt from the provisions of
10 Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public
11 inspection with the state securities commissioner.

12 (24) The granting, perfection, and priority of security interests with respect to transition property
13 and the proceeds thereof are governed by this section rather than Title 30, chapter 9.

14 (25) UPON THE PAYMENT IN FULL OF TRANSITION BOND PRINCIPAL AND INTEREST, THE
15 UTILITY SHALL DISCONTINUE CHARGING AND COLLECTING THE COMPETITIVE TRANSITION CHARGE
16 ASSOCIATED WITH THAT PORTION OF THE UTILITY'S APPROVED TRANSITION COSTS.

17

18 **Section 32.** Section 15-6-137, MCA, is amended to read:

19 **"15-6-137. Class seven property -- description -- taxable percentage.** (1) Class seven property
20 includes:

21 (a) all property used and owned by persons, firms, corporations, or other organizations that are
22 engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas
23 and cities and towns of 800 persons or less;

24 (b) all property owned by cooperative rural electrical and cooperative rural telephone associations
25 that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of
26 a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

27 (c) electric transformers and meters; electric light and power substation machinery; natural gas
28 measuring and regulating station equipment, meters, and compressor station machinery owned by
29 noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

30 (2) To qualify for this classification, the average circuit miles for each station on the telephone

1 communication system described in subsection (1)(b) must be more than 1 mile.

2 (3) Class seven property is taxed at 8% of its market value."

3
4 **Section 33.** Section 15-6-141, MCA, is amended to read:

5 **"15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property
6 includes:

7 (a) centrally assessed electric power companies' allocations, including, if congress passes legislation
8 that allows the state to tax property owned by an agency created by congress to transmit or distribute
9 electrical energy, allocations of properties constructed, owned, or operated by a public agency created by
10 the congress to transmit or distribute electric energy produced at privately owned generating facilities ~~+~~
11 not including rural electric cooperatives~~);~~. ~~However, properties of rural electric cooperatives~~
12 COOPERATIVES' PROPERTY USED FOR THE SOLE PURPOSE OF serving CUSTOMERS REPRESENTING less
13 than 95% of the electric consumers located within the incorporated limits of a city or town of more than
14 3,500 persons in which a centrally assessed electric power company also owns property are IS included.

15 (b) allocations for centrally assessed natural gas companies having a major distribution system in
16 this state; and

17 (c) centrally assessed companies' allocations except:

18 (i) electric power and natural gas companies' property;

19 (ii) property owned by cooperative rural electric and cooperative rural telephone associations and
20 classified in class five;

21 (iii) property owned by organizations providing telephone communications to rural areas and
22 classified in class seven;

23 (iv) railroad transportation property included in class twelve; and

24 (v) airline transportation property included in class twelve.

25 (2) Class nine property is taxed at 12% of market value."

26
27 **Section 34.** Section 69-5-101, MCA, is amended to read:

28 **"69-5-101. Short title.** This part ~~shall be~~ is known and may be cited as the "Territorial Integrity
29 Act of 1971". "

1 **Section 35.** Section 69-5-102, MCA, is amended to read:

2 **"69-5-102. Definitions.** When used in this part, the following definitions apply:

3 (1) ~~"Commercial premises" means the premises where the business of selling, warehousing, or~~
4 ~~distributing a commodity or other business activity is carried on or professional or other services are~~
5 ~~rendered.~~ "Agreement" means a written agreement between two or more electric facilities providers that
6 identifies the geographical area to be served exclusively by each electric facilities provider that is a party
7 to the agreement and any terms and conditions pertinent to the agreement.

8 (2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18,
9 or a foreign corporation admitted thereunder to do business in Montana.

10 (3) "Electric supplier facilities provider" means any electrical utility and any electric cooperative that
11 provides electric service facilities to the public.

12 (4) "Electric service facilities" means any distribution or transmission system or related facility
13 necessary to provide electricity to the premises, including lines.

14 ~~(4)(5)~~ (5) "Electric utility" means a person, firm, or corporation other than an electric cooperative
15 ~~which furnishes electrical~~ that provides electric service facilities to the public.

16 ~~(5) "Industrial premises" means the premises where an industrial activity is carried on, including~~
17 ~~but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping,~~
18 ~~cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other~~
19 ~~extractive, fabricating, or processing activities.~~

20 (6) "Line" means any electric supply conductor ~~operating at a nominal voltage level of 34,500 volts~~
21 ~~or less, measured phase to phase.~~

22 (7) "Premises" means a building, residence, structure, or facility to which ~~electricity is being~~ electric
23 service facilities are provided or is are to be ~~furnished; provided, that installed; however,~~ two or more
24 buildings, structures, or facilities ~~which that~~ are located on one tract or contiguous tracts of land and that
25 ~~are utilized~~ used by one electric consumer for farming, business, commercial, industrial, institutional,
26 governmental, or trailer court purposes ~~shall~~ must together constitute one premises, except that any ~~such~~
27 building, structure, or facility, other than a trailer court, ~~shall~~ may not, together with any other building,
28 structure, or facility, constitute one premises if the electric service to it is separately metered and the
29 charges for ~~such that~~ service are calculated independently of charges for service to any other building,
30 structure, or facility.

1 (8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or
2 a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18."

3
4 **Section 36.** Section 69-5-104, MCA, is amended to read:

5 **"69-5-104. Continuation of ~~service~~ electric service facilities to existing consumers.** ~~Every~~ Each
6 electric ~~supplier~~ service facilities provider ~~shall have~~ has the right to ~~serve~~ provide electric service facilities
7 to all premises being served by it or to which any of its facilities are attached on February 1, 1971 [the
8 effective date of this act]."

9
10 **Section 37.** Section 69-5-105, MCA, is amended to read:

11 **"69-5-105. Service to new consumers.** (1) Subject to ~~69-5-106~~ this part, the electric ~~supplier~~
12 facilities provider having a line nearest the premises, as measured in accordance with subsection (2), shall
13 ~~serve~~ provide electric service facilities to the premises initially requiring service after ~~February 1, 1971 [the~~
14 effective date of this act], which creates a rebuttable presumption that the nearest line is the least-cost
15 electric service facility to the new customer. However, a customer or another electric facilities provider
16 may rebut the presumption, and another electric facilities provider may provide the electric service facilities
17 if it can do so at less cost.

18 (2) All measurements under this part ~~shall~~ must be made on the shortest straight line ~~which~~ that
19 can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises.
20 ~~Construction power for premises to be constructed shall be supplied by the electric supplier having the right~~
21 ~~to serve the completed premises.~~

22 (3) If the electric facilities providers are unable to reach agreement as to which electric facilities
23 provider can provide electric service facilities at least cost, an independent consultant engineer agreeable
24 to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on
25 a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction,
26 as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the
27 consumer at the least cost. The cost of those engineering services must be paid equally by the electric
28 facilities providers involved."

29
30 **Section 38.** Section 69-5-106, MCA, is amended to read:

1 **"69-5-106. ~~Service~~ Electric service facilities to industrial or commercial premises large customers.**

2 (1) An electric utility has the right to furnish electric service facilities to any ~~industrial or commercial~~
3 premises if the estimated connected load for full ~~plant~~ operation at ~~such industrial or commercial~~ the
4 premises will be 400 kilowatts or larger within 2 years from the date of initial service ~~provided such and~~
5 if the electric utility can extend its ~~lines~~ facilities to such industrial or commercial the premises at less cost
6 to the electric utility ~~or the industrial or commercial customer~~ than the electric cooperative cost. The
7 estimated connected load ~~shall~~ must be determined from the plans and specifications prepared for
8 construction of the premises or, if ~~such an~~ estimate is not available, ~~shall~~ must be determined by agreement
9 of the electric ~~supplier~~ facilities provider and the customer. The fact that the actual connected load after
10 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric
11 ~~supplier~~ facilities provider initially providing electric service facilities to continue to provide electric service
12 facilities to such the premises.

13 (2) An independent consultant engineer agreeable to both electric ~~suppliers~~ facilities providers or,
14 in the event of failure of the electric ~~suppliers~~ facilities providers to agree on a consultant engineer, an
15 independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110,
16 shall determine which electric ~~supplier~~ facilities provider can extend its ~~lines to the consumer~~ facilities at
17 the least cost to the utility. The cost of ~~such those~~ engineering services ~~shall~~ must be paid equally by the
18 electric ~~suppliers~~ facilities providers involved.

19 ~~(3) No premises other than another such commercial or industrial premises shall be served from~~
20 ~~a line constructed under this section."~~

22 **Section 39.** Section 69-5-107, MCA, is amended to read:

23 **"69-5-107. ~~Service to property owned by electric supplier~~ Customer-owned facilities.** ~~Nothing in~~
24 ~~69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any~~
25 ~~property owned by the electric supplier.~~ This part may not limit a customer's right to construct, own, or
26 operate electric service facilities for the customer's own use, and construction, ownership, or use may not
27 cause the customer to be considered a utility. A customer may not duplicate existing electric service
28 facilities."

30 **Section 40.** Section 69-5-108, MCA, is amended to read:

1 ~~"69-5-108. Agreements between electric suppliers as to service areas facilities providers.~~
2 ~~Notwithstanding the provisions of 69-5-103 through 69-5-109, an electric supplier may furnish electric~~
3 ~~service to any consumer at any premises being served by another electric supplier upon written agreement~~
4 ~~of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant~~
5 ~~to this part, upon written agreement of the affected electric suppliers. Utilities may enter into agreements~~
6 ~~that identify the geographical area to be exclusively served by each electric facilities provider that is party~~
7 ~~to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the~~
8 ~~commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and~~
9 ~~all customers, except those provided for in 69-5-106."~~

10
11 **Section 41.** Section 69-5-109, MCA, is amended to read:

12 ~~"69-5-109. Special provisions for annexed areas. With respect to service in areas which are~~
13 ~~annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers~~
14 ~~have rights and are subject to restrictions as follows:~~

15 ~~(1) Every electric supplier has the right to serve all premises being served by it on the date of~~
16 ~~annexation.~~

17 ~~(2) An electric cooperative does not have the right to serve any premises initially requiring service~~
18 ~~on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated~~
19 ~~municipalities in which 95% or more of the premises were served by an electric cooperative on February~~
20 ~~1, 1971. (1) Electric facilities providers providing electric service facilities in or near areas that are~~
21 ~~incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since~~
22 ~~1985 or having existing municipal planning zones on [the effective date of this act] shall enter into~~
23 ~~agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit~~
24 ~~the agreements to the commission for approval, pursuant to this part.~~

25 ~~(2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater.~~
26 ~~Agreements must be based on the location of facilities in place on [the effective date of this act].~~

27 ~~(3) If electric facilities providers have failed to negotiate agreements within 1 year from the~~
28 ~~[effective date of this act], the commission shall divide the annexed and planning zone areas into exclusive~~
29 ~~service territories, using the considerations pursuant to [section 44].~~

30 ~~(4) Until agreements are final, electric service facilities to new customers will be provided pursuant~~

1 to 69-5-105."

2

3 **Section 42.** Section 69-5-110, MCA, is amended to read:

4 **"69-5-110. Jurisdiction of district courts over disputes.** The district courts of the county or
5 counties within which the premises or lines involved in any dispute are located ~~shall~~ have jurisdiction under
6 this part over all electric ~~suppliers~~ facilities providers subject to ~~the provisions thereof~~ this part."

7

8 **Section 43.** Section 69-5-111, MCA, is amended to read:

9 **"69-5-111. Judicial remedies.** (1) Whenever ~~it shall appear that any~~ an electric ~~supplier~~ facilities
10 provider is failing or omitting or about to fail or omit to do anything required of it by this part or is doing
11 or is about to do anything or to permit anything to be done contrary to or in violation of this part, ~~any~~ the
12 electric ~~supplier~~ facilities provider affected ~~thereby shall have the right to~~ may file a complaint in the district
13 court ~~briefly~~ setting forth the acts or omissions complained of and requesting an injunction.

14 (2) If an affidavit showing that grounds exist ~~therefor~~ that an electric facilities provider is in
15 violation of this part is filed with the complaint, a temporary restraining order ~~shall~~ must be issued without
16 notice. A copy of the temporary restraining order, complaint, and affidavit ~~shall~~ must be served upon the
17 defendant, together with an order to show cause why the temporary restraining order should not be made
18 permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to
19 show cause must be held at a date specified ~~therein in the order, which shall~~ and may not be more than
20 10 days after service ~~thereof of the order~~ and shall must take precedence over all matters pending before
21 the district court. A judgment making the injunction permanent or dissolving the temporary restraining order
22 ~~therefore that was~~ issued and dismissing the complaint must be made ~~not later than~~ before 10 days after
23 the hearing on the order to show cause.

24 (3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice
25 of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within
26 20 days ~~thereafter~~ after filing the notice of appeal and ~~shall~~ must take precedence over all matters pending
27 before the supreme court of Montana."

28

29 **NEW SECTION. Section 44. Commission jurisdiction over agreements.** (1) All agreements between
30 electric facilities providers must be submitted to the commission for approval. Each agreement must clearly

1 identify the geographical area to be served by each electric facilities provider. The submission must include:

2 (a) a map and a written description of the area; AND

3 (b) the terms and conditions pertaining to the implementation of the agreement;

4 (2) WHENEVER AN AGREEMENT INVOLVES THE EXCHANGE OR TRANSFER OF CUSTOMERS
5 WITHIN SERVICE TERRITORIES, THE FOLLOWING MUST ALSO BE INCLUDED WITH THE AGREEMENT

6 SUBMISSION:

7 ~~(a)~~ (A) the number and class of customers to be transferred;

8 ~~(b)~~ (B) assurance that the affected customers have been contacted and have received a written
9 explanation of the difference in rates; and

10 ~~(c)~~ (C) information with respect to the degree of acceptance by affected customers, such as the
11 number in favor of and those opposed to the transfer.

12 ~~(2)~~ (3) In approving agreements, the commission shall consider but not be limited to consideration
13 of:

14 (a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the
15 reliability of electric service to the existing or future ratepayers of any electric facilities provider party of
16 the agreement; and

17 (b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic
18 duplication of electric service facilities.

19 ~~(3)~~ (4) An agreement approved by the commission is valid and enforceable, and except as provided
20 in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into
21 an exclusive territory.

22 ~~(4)~~ (5) The commission shall state its findings and conclusions for approving or disapproving an
23 agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities
24 providers submitting the agreement to the commission shall act according to the agreement until a decision
25 is rendered.

26 ~~(5)~~ (6) Upon approval of the agreement, any modification, changes, or corrections to this agreement
27 must be approved by the commission.

28 ~~(6)~~ (7) The commission may promulgate rules to administer this part consistent with the
29 requirements of this part.

30

1 NEW SECTION. **Section 45. Repealer.** Section 69-5-103, MCA, is repealed.

2
3 NEW SECTION. **Section 46. Saving clause.** [This act] does not affect rights and duties that
4 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
5 act].

6
7 NEW SECTION. **Section 47. Severability.** If a part of [this act] is invalid, all valid parts that are
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
9 applications, the part remains in effect in all valid applications that are severable from the invalid
10 applications.

11
12 NEW SECTION. **Section 48. Codification instructions.** (1) [Sections 1 through 31] are intended
13 to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 31].

14 (2) [Section 44] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the
15 provisions of Title 69, chapter 5, part 1, apply to [section 44].

16
17 NEW SECTION. **Section 49. Effective date.** [This act] is effective on passage and approval.

18 -END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By CHAIRMAN TOM ZOOK , on April 7, 1997, at
8:00 a.m., in Room 312-2.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Edward J. "Ed" Grady, Vice Chairman (Majority) (R)
Rep. Joe Quilici, Vice Chairman (Minority) (D)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. John Cobb (R)
Rep. Roger DeBruycker (R)
Rep. Gary Feland (R)
Rep. Don Holland (R)
Rep. John Johnson (D)
Rep. Royal C. Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Bob Keenan (R)
Rep. Matt McCann (D)
Rep. William T. "Red" Menahan (D)
Rep. Ray Peck (D)
Rep. Steve Vick (R)
Rep. William R. Wiseman (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Environmental Quality Council
Marjorie Peterson, Committee Secretary

Committee Business Summary:

Hearing: HJR 32, SB 390, HB 549, HB 614
Executive Action: HB 549 TABLED

HEARING ON HJR 32

Opening Statement by Sponsor:

REP. RAY PECK, HD 91, Havre, opened the hearing on HJR 32, An act authorizing a public school funding study.
{Tape: 1; Side: A; Approx. Tape Counter: 0.1.}

Proponents:

None.

Opponents:

None.

Questions From the Committee:

{Tape: 1; Side: A; Approx. Tape Counter: 6.3.}

Closing by Sponsor:

REP. PECK closed the hearing on HJR 32.

{Tape: 1; Side: A; Approx. Tape Counter: 7.0.}

HEARING ON SB 390Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, opened the hearing on SB 390, An act authorizing restructuring requirements for the electric utility industry.

{Tape: 1; Side: A; Approx. Tape Counter: 7.5.}

Proponents:

REP. BILL RYAN, HD 44, Great Falls.

{Tape: 1; Side: A; Approx. Tape Counter: 25.2.}

REP. JOE QUILICI, HD 36, Butte.

{Tape: 1; Side: A; Approx. Tape Counter: 27.7.}

Dave Wheelihan, General Manager, Montana Electric Cooperative Association. Mr. Wheelihan submitted his written testimony.

EXHIBIT 1.

{Tape: 1; Side: A; Approx. Tape Counter: 30.5.}

Bob Gannon, President, Montana Power Company, Butte. Mr. Gannon submitted an explanation of the electric industry restructuring and customer choice and the table of contents for SB 390, 3rd reading copy. Mr. Gannon also submitted written testimony for Perry Cole, Vice President, Business Development and Regulatory Affairs, Montana Power Company. EXHIBITS 2, 3, 4.

{Tape: 1; Side: A; Approx. Tape Counter: 35.6.}

Mick Robinson, Policy Director, Governor's Office. Mr. Robinson submitted a copy of the Racicot Administration Electricity Restructuring Principles. EXHIBIT 5.

{Tape: 1; Side: B; Approx. Tape Counter: 0.1.}

SEN. FRED THOMAS, SD 31, Stevensville.

{Tape: 1; Side: B; Approx. Tape Counter: 7.3.}

Frank Kinsey.

{Tape: 1; Side: B; Approx. Tape Counter: 18.0.}

Donald Quander, Billings.

{Tape: 1; Side: B; Approx. Tape Counter: 22.5.}

James Bellessa, D.A. Davidson, Great Falls.

{Tape: 1; Side: B; Approx. Tape Counter: 30.5.}

Dave Fisher, Chairman, Public Service Commission. Mr. Fisher submitted his written testimony. EXHIBIT 6.

{Tape: 1; Side: B; Approx. Tape Counter: 33.7.}

John Alke, Montana Dakota Utility Cooperative.

{Tape: 1; Side: B; Approx. Tape Counter: 36.7.}

David Owen, President, Montana Chamber of Commerce.

{Tape: 1; Side: B; Approx. Tape Counter: 39.4.}

Gregg Groepper, Energy Share of Montana, Helena. Mr. Groepper submitted a sheet showing the low income energy advisory council report outline. EXHIBIT 7.

{Tape: 1; Side: B; Approx. Tape Counter: 39.6.}

Evan Barrett, Butte Local Development Corporation. Mr. Barrett submitted his written testimony. EXHIBIT 8.

{Tape: 1; Side: B; Approx. Tape Counter: 41.7.}

Dennis Burr, Montana Taxpayers Association, Helena. Mr. Burr submitted his written testimony. EXHIBIT 9.

{Tape: 2; Side: A; Approx. Tape Counter: 1.6.}

Neil Caldwell, Waste Water Company.

{Tape: 2; Side: A; Approx. Tape Counter: 4.5.}

Mike Strand, Montana Independent Rural Telephone Company.

{Tape: 2; Side: A; Approx. Tape Counter: 9.6.}

Opponents:

REP. DAVID EWER, HD 53, Helena.

{Tape: 2; Side: A; Approx. Tape Counter: 11.1.}

Bob Anderson, Public Service Commission, Helena. Mr. Anderson submitted his written testimony. EXHIBIT 10.

{Tape: 2; Side: A; Approx. Tape Counter: 32.9.}

Verner Bertelson, Montana Senior Citizens Association.

{Tape: 2; Side: A; Approx. Tape Counter: 42.2.}

Jim Paine, Pacific Power and Light Company.

{Tape: 2; Side: B; Approx. Tape Counter: 0.1.}

George Paul, Montana Farmers Union.

{Tape: 2; Side: B; Approx. Tape Counter: 3.3.}

Tara Mele, Montana Public Interest Research Group (MontPIRG), Missoula. Ms. Mele submitted her written testimony. EXHIBIT 11.

{Tape: 2; Side: B; Approx. Tape Counter: 10.8.}

Derek Birnie, Montana People's Action.

{Tape: 2; Side: B; Approx. Tape Counter: 14.8.}

Dick Pattison, Montana Senior Citizen's Association. Mr. Pattison submitted his written testimony, written testimony from Archie Nunn, and an Actin Alert card. EXHIBITS 12, 13, 14.

{Tape: 2; Side: B; Approx. Tape Counter: 19.4.}

Brad Griffin, Montana Retailers Association. Mr. Griffin also submitted written testimony from William Lyon, Federated and Montana Retailers Association. EXHIBIT 15.

{Tape: 2; Side: B; Approx. Tape Counter: 22.7.}

Peter West, Renewable Northwest Project, Portland, Oregon. Mr. West submitted his written testimony. EXHIBIT 16.

{Tape: 2; Side: B; Approx. Tape Counter: 24.5.}

Nancy Hirsh, Policy Director, Northwest Conservation Act Coalition, Seattle, Washington. Ms. Hirsh submitted her written testimony. EXHIBIT 17.

{Tape: 2; Side: B; Approx. Tape Counter: 31.8.}

Debbie Smith, Attorney, Sierra Club, Helena. Ms. Smith submitted a sheet of amendments requested by NRDC. EXHIBIT 18.

{Tape: 2; Side: B; Approx. Tape Counter: 39.9.}

Ted Lange, Northern Plains Resource Council.

{Tape: 2; Side: B; Approx. Tape Counter: 43.4.}

Pat Judge, Montana Environmental Information Center. Mr. Judge submitted his written testimony. EXHIBIT 19.

{Tape: 2; Side: B; Approx. Tape Counter: 44.8.}

Kathleen Brown, Helena.

{Tape: 3; Side: A; Approx. Tape Counter: 3.2.}

Chuck Evilsizer, Ronan and Hot Springs Telephone Companies. Mr. Evilsizer submitted his written testimony. EXHIBIT 20.

{Tape: 3; Side: A; Approx. Tape Counter: 3.7.}

Betty Waddell, Montana Association of Churches, Helena.

{Tape: 3; Side: A; Approx. Tape Counter: 5.0.}

Dave DeHoff, Montana Audubon Society.

{Tape: 3; Side: A; Approx. Tape Counter: 6.8.}

Ronald Ewer, Montana Chapter of Sierra Club.

{Tape: 3; Side: A; Approx. Tape Counter: 7.9.}

Riley Johnson, National Federation of Independent Businesses.

Mr. Johnson submitted a copy of the NFIB special poll results on electricity deregulation. EXHIBIT 21.

{Tape: 3; Side: A; Approx. Tape Counter: 9.0.}

Questions From the Committee:

{Tape: 3; Side: A; Approx. Tape Counter: 11.8.}

Tim Gregori, Big Horn County Electric Cooperative. Mr. Gregori submitted his written testimony. EXHIBIT 22.

{Tape: 3; Side: A; Approx. Tape Counter: 35.2.}

Perry Cole, Vice President, Business Development and Regulatory Affairs, Montana Power Company.

{Tape: 3; Side: A; Approx. Tape Counter: 36.7.}

Closing by Sponsor:

SEN. THOMAS closed the hearing on SB 390.

{Tape: 4; Side: A; Approx. Tape Counter: 39.2.}

HEARING AND EXECUTIVE ACTION ON HB 549Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, HD 95, Malta, opened the hearing on HB 549, An act requiring a comprehensive review of electrical utility industry restructuring. He then asked for the bill to be tabled after hearing SB 390.

Motion/Vote: REP. BERGSAGEL moved that HB 549 Be Tabled. Motion carried unanimously.

{Tape: 4; Side: B; Approx. Tape Counter: 0.4.}

HEARING ON HB 614Opening Statement by Sponsor:

REP. CARLEY TUSS, HD 46, Black Eagle, opened the hearing on HB 614, An act providing a date certain for transition to customer choice of an electricity supplier.

{Tape: 4; Side: B; Approx. Tape Counter: 3.2.}

Proponents:

Nancy McCaffree, Public Service Commission, Helena. Ms. McCaffree submitted her written testimony. EXHIBIT 23.

{Tape: 4; Side: B; Approx. Tape Counter: 12.7.}

Chuck Evilsizer, Ronan and Hot Springs Telephone Companies.

{Tape: 4; Side: B; Approx. Tape Counter: 15.8.}

George Paul, Farmers Union.

{Tape: 4; Side: B; Approx. Tape Counter: 21.1.}

Al Thomas, American Association of Retired Persons.

{Tape: 4; Side: B; Approx. Tape Counter: 24.3.}

Opponents:

Tara Mele, MontPIRG.

{Tape: 4; Side: B; Approx. Tape Counter: 26.2.}

Testimony of the Montana Electric Cooperative Association before
the House Appropriations committee-SB390

Mr. Chairman, members of the committee, my name is Dave Wheelihan, I am the general manager of the Montana Electric Cooperative Association. Montana Electric Cooperatives have more than 90,000 consumers, translating to electrical service to more than 330,000 Montanans. On behalf of our members I am here today to support senate bill 390.

I'll give you a brief overview of how we got to where we are today on this bill, and we also have available Tim Gregori, Manager of Bighorn Electric to answer questions on the cooperative sections of the bill.

As you know, at the beginning of this session, the position of the Montana Rural Electric Cooperatives on restructuring was to offer a bill establishing a steering committee to formulate a plan for customer choice. The committee would then report back to the legislature in 1999 with its recommendations. However, we met with various parties interested in restructuring to see if it was possible to make restructuring work for electric cooperatives at a quicker pace. The negotiations were intensive and extensive. The legislation before you is the result of those negotiations and we believe offers rural electric consumers opportunities and protections if restructuring occurs in Montana. The bill is the work product of many groups representing a broad cross section of interests. It is not a Montana Power Company bill.

It is our belief that if our consumers want to choose their power supplier, we should offer them the ability to do so. However, with that choice comes a responsibility. If a consumer chooses to pick a power supplier different than the cooperative's, they have a responsibility to the remaining consumers for the infrastructure built to supply them power. The cost of poles, wires, power contracts, administrative and maintenance items currently are all built into a consumer's rate. If a consumer chooses another power supplier other than the cooperative, this bill ensures that they still have an obligation to the system. That obligation would show up on the departing consumer's bill in the form of a transition charge representing the investment our cooperatives have made on behalf of that consumer.

To Montana electric cooperatives, making sure remaining consumers don't have to pay for someone else's choice through higher rates is the key to our support of this legislation. With current technology and innovative contract arrangements, consumers can find ways to leave our systems now without any obligation to

remaining consumers. Once they are gone, we can't get them back to pay for their obligation. That means the remaining consumers have to pick up the tab. Without the obligations imposed in this bill, our rates would go up if enough consumers leave the system.

As non-profit power suppliers, our members own us and decide what's in the best interest of the cooperative. That local control has worked well for over 60 years, and is retained in the cooperative sections of the bill. In our opinion, our consumers should continue to decide what's in the best interest of our electric cooperatives. We worked hard on bill language that reflects the local control and the uniqueness of electric cooperatives. We think the bill in its current form allows our cooperatives to shape their own destiny.

For us, trying to strike a balance between big electric cooperatives, small electric cooperatives, growth cooperatives, no-growth cooperatives, the various power suppliers and opportunities and protections was a daunting task. As we said during the negotiations, restructuring to the consumer-owners of a rapidly growing western electric cooperative means something different than it does to the farmers and ranchers of a small eastern cooperative. Clearly, the opportunities and benefits are different. That's why this bill gives electric cooperatives flexibility in opening up their systems to customer choice. Simply put, some electric cooperatives are ready now for customer choice, some cooperatives need time.

The bill also changes existing territorial integrity law to better prevent the wasteful duplication of facilities. This will allow for more efficient use of capital in a capital intensive environment.

Finally, the bill allows the local boards of cooperatives to continue to target their dollars to low-income energy bill assistance, conservation and renewable resources.

With the flexibility for local boards, the consumer protections and the opportunities the legislation presents; the Montana Electric Cooperatives' Association supports SB390. Thank you and I'll be happy to answer any questions the committee might have.



THE MONTANA POWER COMPANY

Electric Industry Restructuring and Customer Choice

Senate Bill 390 Hearing
House Appropriations Committee
April 7, 1997

Forces Driving Industry Restructuring

- Competition is here; power supply markets are competitive.
- Transmission systems are open.
- Customers are demanding retail access.
- Federal Legislation is imminent, as early as 1997.
- Recommendations of the Comprehensive Review of the Northwest Energy System are available as a guide.
- The changes in the Electric Utility Industry are evolving quickly to Customer Choice.

MPC's Restructuring Challenges

- Meeting Customer Needs by Implementing Customer Choice in a timely and orderly fashion.
- Operating MPC Generation in competitive markets for Power Supply.
- Controlling costs and being competitive.
- Maintaining System Integrity and Reliability.
- Maintaining Financial Integrity and Credit Ratings.

Working Together to Move Montana Forward

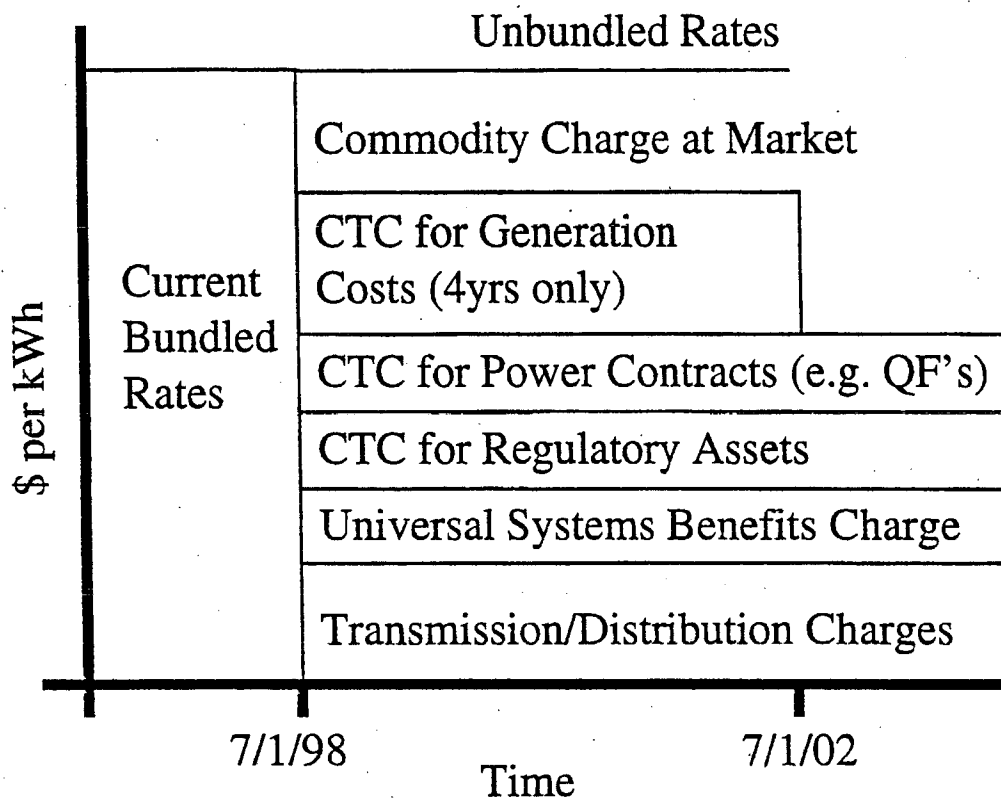
- Montana's Electric Restructuring Bill:
 - Provides all Customers with choice, protection and opportunities for lower energy bills.
 - Allows Utilities to transition to Competition, while remaining financially stable.
 - Makes Montana more competitive in terms of Economic Development.
 - Should be approved by the Montana Legislature as it addresses and represents the interests of all Montanans.

Providing Customers' Choice

- The Electric Restructuring Bill requires utilities to file Transition Plans that:
 - Provide full Customer Choice by July 1, 2002, with limited exceptions.
 - Start Pilot Programs in 1998 for Residential and Commercial Customers.
 - Allow Large Customers to choose Power Suppliers by July, 1998.
 - Provide for Customer Education.

Impact on Customer Rates

- Rates no higher than what would have existed under the current regulatory system during the transition period.
- Rate Freeze Provisions.
- Unbundling of Rate Components:



Provisions for Transition Cost Recovery

- MPC's financial future has a direct link to Transition Cost Recovery.
- Hydro/Thermal out-of-market costs only recovered for 4-years.
 - MPC assumes significant market risks starting in year 5.
- Federally mandated Qualifying Facility cost recovery is critical.
- Recovery of costs resulting from previous Regulatory Decisions (Regulatory Assets) is required.
- Financial stability needed to maintain System Integrity and Reliability

Other Key Elements of Electric Industry Restructuring

- Public Purpose Programs are supported and enhanced.
- Reciprocity Provisions.
- Transition Cost Financing (Revenue Bonds).
- Regulatory/Power Supply Backstop for Customers if markets don't develop.
- Territorial Integrity amended for Customer Choice.
- Consumer Protection through Commission oversight and power supplier licensing.

Senate Bill 390
Electric Utility Restructuring and Customer Choice Act

Comparison of Interests

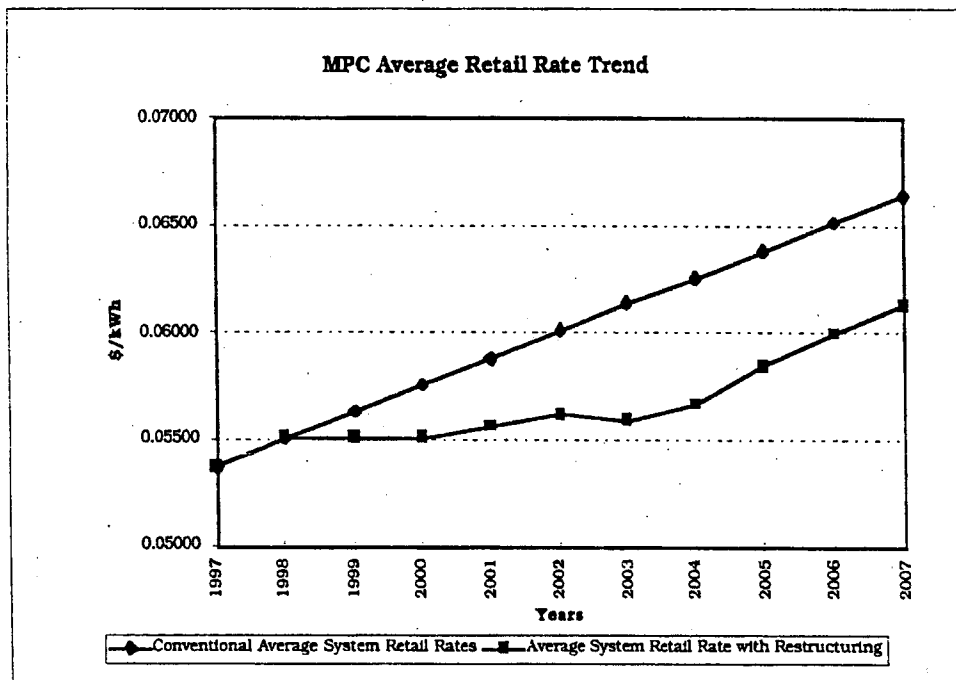
<u>Interest</u>	<u>With SB390</u>	<u>Without SB390</u>
I. Consumers:	A. 2x4 Rate Freeze B. Customer Choice > 1000 kW C. Full Choice when admin. feasible (Pilot Programs < 1MW) D. For customers left without choice, continued supply and regulation through distribution function	A. No Rate Freeze B. Take consequences of any large customer loss
II. Public Purposes: - Conservation - Renewables - Low-Income	A. Funding $\geq$ Current Levels B. Guaranteed Funding C. Floor Guaranteed	A. Funding Declining. B. No Guaranteed Funding C. Conservation Declining
III. Utilities:	A. Recovery of reasonable, unmitigatable stranded or transition costs B. Orderly transition to the future C. Revenue Bonds D. Direct attention to tax issue.	A. Stranded Cost recovery certain, its in rates. Litigation would probably be part of future stranded cost recovery. B. Face potential loss of large customers through: 1. - Federal Legislation coming 1st, or 2. By-pass options
IV. State:	A. Conscious focused attention on any Property Tax consequences - not cause/effect, though	A. Economic Development questions B. Economic Loss potential
V. REC's:	A. Solution to Territorial Integrity Act Issues B. Opt out option C. Clarity of USBC D. Certainty of Transition Cost Recovery	A. Territorial Integrity Issues unsolved (annexation, etc.)
VI. Others:		

Senate Bill 390
Electric Utility Restructuring and Customer Choice Act

**Montana Power Company
Projected Retail Rate Trend**

- Q. How are Montana Power Company's retail rates expected to trend with and without SB390?
- A. Absent SB390, Montana Power Company would expect its rates to increase at or near the rate of inflation under a business as usual scenario. However, with the rate freeze provisions of SB390 and a long term forecast of market prices that are below MPC's current level of generation costs, customer rates would be lower when compared to a conventional rate forecast.

The following chart illustrates a comparison of retail rate trends with and without SB390:

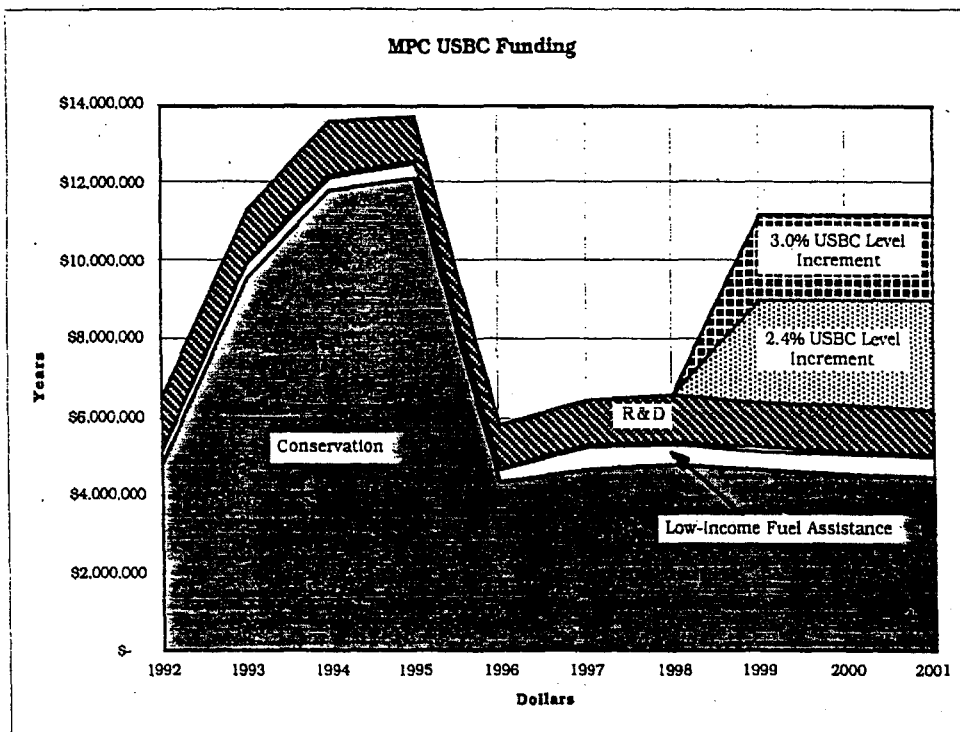


Senate Bill 390
Electric Utility Restructuring and Customer Choice Act

Montana Power Company
Public Purpose Programs Funding Levels

- Q. What is the expected level of funding by Montana Power Company for public purpose programs in SB390?
- A. SB390 currently calls for a public purpose program funding level of 2.4% of 1995 revenues, while the Comprehensive Review of the Northwest Energy System Report recommended 3.0%

The following chart illustrates these levels of funding compared to MPC's current public purpose funding levels without SB390:



SB 390
3rd Reading Copy

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**TESTIMONY OF PERRY J. COLE
ON BEHALF OF THE MONTANA POWER COMPANY
IN SUPPORT OF SENATE BILL 390
ELECTRIC UTILITY RESTRUCTURING AND CUSTOMER CHOICE ACT
APRIL 7, 1997**

My name is Perry Cole. I am the Vice President, Business Development and Regulatory Affairs in the Energy and Communications Services Division of the Montana Power Company. I am testifying in support of Senate Bill 390, the Electric Utility Restructuring and Customer Choice Act. Although all provisions of the bill are necessary to restructuring the electric utility industry in Montana, my testimony focuses on certain features of the legislation that are important for Montana Power Company customers and for the Montana Power Company as a company that wants to compete in an unregulated electricity supply market.

Over the last few years, the electric industry has changed fundamentally. The generation of electricity is no longer a monopolistic industry. Real competition exists in the wholesale electricity supply market and because of that competition, over time, wholesale customers have benefited from accessing the competitive power market. Retail customers deserve the same opportunity, over time, to access the lowest cost electricity and expanded energy-related services available in the market.

Montana Power's industrial and larger commercial retail customers are demanding access to the competitive electricity supply market. For a variety of reasons, it is easier for larger customers to gain access more quickly to the competitive electricity supply market and already electricity marketers have visited these customers. However, there is no reason to believe that, given the opportunity and sufficient time, a competitive electricity supply market will not develop for small commercial and residential customers, bringing the benefits of competition to these customers. It is important to Montana Power that all customers are given that opportunity. This legislation creates that opportunity.

Also, the bill creates the opportunity for public utilities, like Montana Power, to compete for those customers that do have competitive supply alternatives in the electricity supply market. As well, the bill allows public utilities to continue to recover certain power supply-related costs that are currently being recovered in rates but that would not be recoverable in a

competitive electricity supply market. Recovery of these electricity supply related costs that were incurred or created because of current regulatory requirements and practices and federal law represents one of the balancing features of the legislation.

The bill creates a date certain, July 1, 2002, by which all customers must have choice of electricity supplier. After that date, assuming competitive electricity supply market exist for all customers, the price of electricity will no longer be regulated by the Public Service Commission for any customers. The Commission will, however, regulate retail transmission and distribution facilities, thereby monitoring the continued safety and reliability of these facilities. If a competitive supply market does not exist for certain customers, the bill provides that the Commission will continue to regulate, through public utility's distribution function, the price of electricity for those customers. If after six years a competitive supply market still has not developed for smaller customers, the legislature may be asked to revisit this issue.

Prior to July 1, 2002, customer choice can be phased in. No later than July 1, 1998, customers with loads of greater than 1000 kW or customers with loads of 300 kW at a meter that can aggregate those loads to greater than 1000kW will be able to choose their electricity supplier. These customers are able to go earlier because, generally, it is agreed that a competitive electricity supply has developed for these customers, as well as the technical and administrative support, such as metering and billing, necessary to enable choice for these customers.

All other customers must have choice of electricity supplier as soon as is administrative feasible, but by July 1, 2002. Choice is delayed for these customers because, generally, it is agreed that a competitive electricity supply market has not developed for these customers, nor has the technical and administrative support necessary to facilitate choice for these customers. To gain a better understanding of how to accomplish choice for small commercial and residential customers and to test the electricity supply market development for these customers, utilities will conduct pilot programs. These programs must be completed prior to July 1, 2000. Montana Power believes that these programs will tell us whether it will be administratively feasible to offer small commercial and residential customers choice of electricity supplier prior to July 1, 2002.

By creating the opportunity for all customers to have choice, the legislation prevents the cost-shifting from large customers to small customers that would occur if large customers were able to bypass a public utility's transmission or distribution system. On our system, approximately

25% of the customers account for approximately 75% of the electricity sales. While Montana may be a low-cost state nationally, regionally, Montana's electricity prices rank in the middle. As stated earlier, industrial and commercial customers are demanding more competitively priced electricity. Under traditional utility regulation, when customers leave the system, system costs previously born by them are shifted to the remaining customers on the system. In short, when large customers leave the system, small customers pick up the tab. This happened in 1990 when our largest gas customers went to the market and the remaining customers rates went up by 8% even though those largest gas customers took on some obligations as they left the system. The legislation gives the larger customers a definite date when they will have a choice of electricity supplier while protecting against the cost-shifting that would occur under the current regulatory framework if these customers left the system.

Further, as a matter of economic development, Montana must be able to offer competitively priced electricity. New projects considering a site to locate in Montana are very interested in whether competitive market-based electricity prices are or will be available soon. Without market-based electricity prices, facilities will not consider Montana. For Montana Power this represents potential lost business opportunities. For the state, this represents potential lost economic development opportunities.

The bill allows public utilities to recover what are labeled as "transition costs." Transition costs are a public utility's net verifiable generation-related and electricity supply costs that are being recovered in rates now and that would be recoverable in the future if the Commission continued to regulate electricity supply as it currently does, but will become unrecoverable as result of restructuring and customer choice. The legislation identifies certain categories of power supply-related investments and costs as transition costs. Under the bill, public utilities have an affirmative obligation to make all reasonable efforts to mitigate transition costs. Once the Commission has determined the amount of a public utility's transition costs, after a contested-case hearing, the bill allows a certain level of recovery from customers for three categories of transition costs: (1) the bill allows recovery of the unmitigable costs of qualifying facility contracts which are contracts public utilities were required to enter into by federal and state law; (2) it allows recovery of the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices; and (3) it allows recovery of the unmitigable

costs related to public utility owned generation and other power purchase contracts, limited to the costs accruing during the four years between July 1, 1998 and July 1, 2002. Transition costs will be recovered through transition charges to be collected from customers. Customers with new loads of 1000kW or greater that are connected to a utility's system after December 31, 1996 are exempted because there were no costs incurred on their behalf that would qualify as transition costs.

It is important to understand, and emphasize, that transition cost recovery process will not cause customer rates to be any higher than they would have been otherwise under current regulation. As stated earlier, customers are already paying these costs in current rates. Today, various components of electric service (i.e., cost of electricity supply, cost of transmission and distribution, cost of related services) are not itemized on a customer's electric bill, but are "bundled." As a result of restructuring, these costs will be "unbundled", relabeled as transition costs, and itemized separately on a customer's electric bill. For customers who exercise choice of electricity supplier between July 1, 1998 and July 1, 2002 (the transition period), transition charges imposed to collect their share of transition costs will appear as a separate item on a customer's electric bill. Customers who do not exercise choice of electricity supplier during the transition period will continue to pay their share of these generation-related costs as they currently do, that is in a bundled rate. Transition charges will be collected from customers for the duration of their respective recovery periods. The chart in the handouts that accompanied my testimony illustrates this point.

As a guarantee that transition cost recovery will not create extra costs, the bill provides that a public utility may not charge rates or collect costs, including costs reallocated to transition costs, at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact. There are two exceptions to this provision, neither of which is related to costs that qualify as transition costs. First public utilities can recover any increased costs related to public purpose programs such as energy efficiency, renewables, and low income bill assistance greater than those currently in rates. Second, increased costs necessary to implement full customer choice, including but not limited to, metering, billing, and technology, can be collected from those customers on whose behalf the increased costs were incurred.

Finally, if transition bond financing is authorized, then a public utility must use any savings created by their use to first fund a partial rate or full rate moratorium for two years, and second, to fund transition cost mitigation or shortened transition cost recovery periods. Transition bond financing represents a vehicle through which a utility can reduce transition costs and pass the savings, through lower financing costs, to customers.

As stated before, recovery of transition costs in the manner provided in the bill is critical to Montana Power's ability to have an opportunity to compete in a restructured electric industry and to maintain a reliable electric system. I will briefly mention the other bill provisions that help create a level playing field for electricity suppliers. The bill requires a utility, unless otherwise exempt, to open its transition and distribution facilities to electricity suppliers at terms, rates, and conditions comparable to the terms, rates, and conditions under which the utility's affiliates or unregulated divisions are able to use these facilities. The bill addresses tax issues with the goal of having electricity suppliers being taxed comparably at the state and local levels.

Reciprocity is also an important level playing field issue. For example, if Company A or its affiliates can sell electricity to Montana Power customers through Montana Power distribution facilities, but Montana Power cannot sell electricity to Company A's customers because its distribution facilities are not open, then Company A has an unfair competitive advantage. The reciprocity provisions of the bill prevent this sort of inequity. The bill also creates standard licensing requirements that electricity suppliers must meet. In addition to creating comparable licensing standards, licensing, which will be overseen by the Commission, ensures that the electricity supply offered by an electricity supplier will be adequate in terms of quality, safety and reliability. Finally, the bill amends the Territorial Integrity Act to be consistent with the restructured industry.

In summary, Montana Power believes that customer choice is inevitable and that it is better to be proactive than reactive. Although a restructured electric industry presents significant risks to Montana Power investors, we believe that it is better to recognize that the industry has changed, to acknowledge that the changes can benefit our customers, to listen to our customers who want electricity supply alternatives, and to take proactive steps to offer the benefits of competition to our customers while creating the opportunity for public utilities, like Montana Power, to compete within the changed industry. This bill offers a reasonable transition to

customer choice and a restructured industry that keeps Montana in charge of restructuring its electric industry in a way that works for Montana. On behalf of the Montana Power Company, I urge each of you to vote for this bill.

OFFICE OF THE GOVERNOR
STATE OF MONTANA

MARC RACICOT
GOVERNOR



STATE CAPITOL
HELENA, MONTANA 59620-0801

Racicot Administration
Electricity Restructuring Principles
January 15, 1997

Regionally and nationally, electricity industry restructuring is proceeding. It is my belief that Montana can benefit from an efficient electricity marketplace that affords all consumers access to competitively priced electricity supplies. Because our fragile energy dependent state is in two electrical grids, and because our utilities operate in disparate environments, this matter is especially complex in Montana. So, it is in Montana's interest to carefully facilitate the transition to a competitive market while maintaining important public purposes.

To allow Montana to shape restructuring, to meet the specific needs of Montanans, and to prevent outside events from overtaking us, the 1997 Legislature should establish the framework necessary to promote a reasoned and orderly transition to a competitive market system. In making decisions regarding the restructuring of the electricity industry, I recommend the following principles.

Governing Principles

- A. Legislation should establish a date by which all Montanans will be able to choose their electricity supplier.
- B. Legislation should assure that reliable electric service is maintained.
- C. Legislation should provide that all electricity customers in Montana share in the benefits from a restructured industry.

Support Principles

- I. The restructured electricity industry should include the following characteristics:
 - A. Competition among generators of electricity and among providers of retail energy services.
 - B. Minimal regulation for competitive markets.
 - C. All customers should be able to access competitive markets and choose suppliers as quickly as possible, preferably at the same time.

Racicot Administration
Electrical Restructuring Principles
Page 2

- II. Consumers should be protected from market abuses and unwarranted cost shifts between customer classes.
- III. During the transition to a competitive electricity industry, utilities should have a fair opportunity for the recovery of stranded costs while affording consumers access to market priced electricity. Utilities have the affirmative obligation to mitigate stranded costs to the greatest extent possible.
- IV. During the transition to competitive markets, customers should not pay higher rates as a result of restructuring.
- V. The use of state financing in electricity restructuring should result in verifiable benefits for Montana consumers.
- VI. Important public purposes within the current electricity industry structure should be preserved and assessed equitably among all market participants. Public purposes, wherever possible, should be moved to the private sector as markets develop or mature.
 - A. Low income citizens must have equal access to affordable electricity.
 - B. Low income electricity assistance must be maintained or enhanced.
 - C. Funding of renewable and conservation resources (including market transformation) should continue in a way that is appropriate to the competitive market.
 - D. Funding mechanisms for public purposes should be deployed at the same time retail access becomes available.
- VII. Restructuring should not compromise the environment or environmental protection.
- VIII. The Territorial Integrity Act should be amended to facilitate competition in the electricity industry. It should be changed from defining who is responsible for serving all the electrical needs of a customer to who is responsible for connecting that customer to the electrical grid.
- IX. The effects on state and local governments should be considered when looking at tax issues associated with the restructuring of the electricity industry.
- X. Restructuring in Montana should be as consistent as practicable with restructuring elsewhere in the Northwest.

Testimony of Dave Fisher, Chairman, Public Service Commission
Proponent, Senate Bill 390
April 7, 1997

Good morning. I am Dave Fisher, Chairman of the Public Service Commission. Thank you for the opportunity to appear before the Appropriations Committee in support of Senate Bill 390, the "Electric Utility Industry Restructuring and Customer Choice Act."

A majority of the Commission supports Senate Bill 390. The Commission supports customer choice of electricity suppliers as soon as possible. Senate Bill 390 provides for customer choice of electricity supply, while enabling public utilities to make the transition from regulation to competition.

In the past two years the Commission has been actively involved in restructuring issues. We held round-table discussions with broad public involvement and issued our electric restructuring principles almost a year ago. MPC proposed this legislation last November. The PSC staff participated in the process to help improve the bill and include restructuring principles important to the PSC and ratepayers.

Senate Bill 390, as amended, has come a long way toward meeting the PSC's concerns about customer choice and competition. What is important to the Commission? The PSC supports a four-year rate cap that covers all elements of the rates. Senate Bill 390, as amended,

provides for a full cap for two years for all customers. For the small business and residential customers, this bill will be a partial cap for the next two years.

The Commission wants to ensure that there are real opportunities for the small and residential ratepayers to enter into the market. To this end the Commission supports as early an opportunity for residential customer choice as possible. The PSC recognizes that the large industrial customers now have the ability to enjoy the benefits of competition and choice. Senate Bill 390 offers some protection to the ordinary electric customers as their choice of suppliers and competition to provide their electric supply become feasible.

SB 390 provides that utilities, in making the transition from a monopoly industry to competition, recover some of their previous investment through rates. Utilities were required to make investments under regulation which have become uneconomic. This recovery of investment in rates is balanced in SB 390 with a bonding proposal designed to reduce the costs to ratepayers in the transition. Senate Bill 390 requires the utilities to do everything they can to reduce the costs to ratepayers.

Again, thank you for this opportunity. The Commission and its staff will be available to answer questions and assist you at any time.

LOW INCOME ENERGY ADVISORY COUNCIL REPORT OUTLINE

The Montana Low Income Energy Advisory Council (the Council) established the following immediate and long-term goals and objectives to guide it in meeting the charges listed below and in Executive Order 5-96.

ADVISORY COUNCIL GOALS

- I. To propose a short-term solution to the home heating problems of low income households that uses historical Low Income Energy Assistance Program (LIEAP) participation rates as the indicator of those in need of assistance.
- II. To develop a long-term funding scenario that encompasses greater participation by those LIEAP eligible households desiring assistance.
- III. To explore, develop, and maximize to the greatest feasible extent, non-LIEAP approaches to the energy needs of low-income people.

ADVISORY COUNCIL OBJECTIVES

- I. Provide affordable energy services (heating costs) for all eligible low-income households.
- II. Provide long-term, sustainable and stable funding mechanism and commitment to provide a reasonable level of direct fuel bill payment, emergency and weatherization assistance.
- III. Encourage a level playing field among all energy providers.
- IV. Distribute resources equitably based on household energy costs and poverty level.
- V. Administer programs in an equitable and efficient manner to the benefit of low-income households, energy providers, and state and local program administrators.
- VI. Encourage private and market based strategies and resources consistent with goals.
- VII. Encourage private contributions and leveraging through federal, state, and private efforts.
- VIII. Encourage flexibility and innovative programs.

ADVISORY COUNCIL RESPONSE TO CHARGES FROM THE GOVERNOR'S EXECUTIVE ORDER

- I. Determine the Scope of the Current Need for Low-Income Energy Assistance in Montana

Based on the 1990 census there are 62,725 low-income households in Montana living at or below 125 percent of poverty and thus potentially eligible for LIEAP. Another 17,439 households (those living between 125 and 150 of poverty) do not meet eligibility requirements for LIEAP.

Based on prior year program participation the Council has found:

- A. Annually between 18,000 and 22,000 Montana households apply for and receive of heating assistance under LIEAP. The cost of providing the appropriate level of heating assistance will be \$6.5 million each year FY98 and FY99;
- B. The Weatherization program has the capacity to cost effectively reduce the heating costs of approximately 2,100 of the highest energy consumption LIEAP households each year. The cost of providing weatherization assistance will be \$3.5 million each year FY98 and FY99;
- C. Annually approximately 1,000 Montana households (those whose incomes exceed LIEAP eligibility guidelines or whose needs are not met by LIEAP) apply for heating assistance through Energy Share of Montana. The cost of providing assistance through Energy Share of Montana will be \$400 thousand each year FY98 and FY99; and
- D. Efforts to ensure that all Montana households in need of energy assistance are aware of available programs and have the opportunity to apply for them must be sustained and/or bolstered.

II. Determine the Status of Montana's Current Public and Private Low-Income Energy Programs

The federal government is expected to provide only \$4.5 million in LIEAP heating assistance and \$2.2 million in weatherization assistance each year FY98 and FY99. Contributions to Energy Share of Montana (a non-profit fuel fund) are uncertain. The Council has established that the shortfall between the cost of LIEAP and Weatherization it is willing to fund and the amount provided for those programs by the federal government is \$3.3 million each year FY98 and FY99 (\$6.6 million total).

III. Develop a Plan for Meeting Montana's Need for Energy Assistance and Weatherization to Ensure That Both Long- and Short-Term Energy and Shelter Needs are Addressed

To cover the deficiency between the total cost of LIEAP and Weatherization and the amount provided for those programs by the federal government, the Council recommends that the Governor propose and the Montana Legislature enact a .3753 percent fuel surcharge on gross retail operating revenues derived from the supply, transmission, transportation, distribution, delivery, customer charges, fees and rentals for electricity, natural gas, propane, fuel oil, coal and distillate fuel at the point of sale for customer use in Montana. Wholesale sales for resale are exempted to avoid multiple taxation. The surcharge may be reduced by credit for qualifying low-income programs for discounts, weatherization, fuel fund contributions, bill write-offs and other bonafide programs which are generally available on a non-discriminatory manner to all qualifying low-income households. Net revenue generated by the surcharge will be remitted to the State for distribution to the above mentioned programs. The surcharge will remain at .3753 for each year FY98 and FY99.

Further, the Council recommends the Governor propose and the Legislature enact a foundation to provide long-term funding for Energy Share of Montana. The foundation will be funded by energy provider donations and a 50 percent tax credit for such donations. The tax credit will be capped at \$1.25 million annually not to exceed \$5 million in total. The tax credit will be applied first to coal tax liability, second to corporation license tax liability, and third to the 101 mills of statewide property tax. For ease of administration the property tax credit would be operated as a state rebate of property taxes paid on the 101 mills for qualifying donations to the foundation. Contributions to the foundation which are eligible for tax credits will be capped at \$10 million. No distributions to Energy Share of Montana will be made from the foundation until \$5 million in assets have been generated. When that occurs, 5 percent of the annual earnings of the foundation will be distributed to Energy Share's Board of Directors and any remaining earnings will be reinvested in the foundation. Selection of a private foundation manager will be accomplished by the Montana Board of Investments in compliance with competitive procurement procedures governing state agencies. Annual tax credit implications of the foundation for the State General Fund (assuming annual donations of \$2.5 million) range from \$.7 million to \$.9 million depending on the mix of taxes against which the credit is claimed.

The Council recognizes that it has only provided suggestions for a short-term solution to the problem and that a long-term solution must include 1) ways to recognize higher energy costs over time, 2) ways to fund program deficits caused by falling federal support over time, and 3) ways to design and discover outreach strategies to increase low-income participation in programs by assuring that eligible

households have an opportunity to access benefits.

IV. Identify Resources Needed to Fulfill the Plan and Develop, Advocate and Aid In Implementing Strategies to Secure the Identified Resources

To implement the course of action described above and to ensure that both the long- and short-term energy and shelter needs of low-income Montanans are met, the Council recommends that:

- A. The Department of Public Health and Human Services request a bill for an act establishing the fuel surcharge and the foundation for enactment by Montana's 55th Legislature;
- B. In accordance with Executive Order 5-96, the Council continue to advise the Department of Public Health and Human Services and the Governor's Office on issues affecting energy assistance in Montana, particularly the long-term need for energy assistance and methods of ensuring that all households in need of energy assistance are aware of available programs and have the opportunity to apply for them;
- C. Future activities of the Council be coordinated with other bodies, such as the Comprehensive Review of the Northwest Energy System and the Northwest Power Planning Council, that are addressing the same and similar issues;
- D. The support of human service agencies, such as HRDCs, religious organizations, and charitable groups, working with low income people be enlisted;
- E. Administrative procedures and costs be reviewed and changes made as necessary to ensure funds are efficiently and equitably distributed to those in need of assistance;
- F. An informational packet and arrangements for presentations to media outlets and editorial boards be prepared; and
- G. Council members arrange for or provide informational briefings for the groups they represent.

Testimony of Evan Barrett
on behalf of
the Butte Local Development Corporation
and
the Montana Economic Developers' Association
in support of
SB 390

EXHIBIT 8
DATE 4/7/97
SB 390

Mr. Chairman and Members of the Committee, my name is Evan Barrett. I am Executive Director of the Butte Local Development Corporation (BLDC) and Chairman of the Legislative Committee of the Montana Economic Developers' Association (MEDA). It is on behalf of both of those organizations that I testify today in support of SB 390.

SB 390 is designed to assist the State of Montana to enter into the world of market-based electrical costs. That world is already partially in existence because of the federal legislation which has deregulated electrical power at the wholesale level -- creating a market-based system on sales between the government, the co-ops, and the investor-owned utilities. And very rapidly, the country is moving toward the day when retail customers -- both large and small -- will have the opportunity to seek the best market price for their electrical power.

Today I want to speak to you about my experience, as an economic developer, in trying to establish good, high-quality jobs in the industrial sector of the economy that greatly depends on low cost electrical power. I was able to work with the Montana Power Company in attracting Advanced Silicon Materials, Inc. (ASiMI) to Butte-Silver Bow and to Montana. ASiMI brings to Montana nearly 300 very high paying industrial jobs, nearly \$500 million in construction, and tens of millions of dollars of taxes to the state's coffers. This is the largest construction project in Montana in decades. And it takes us, as a state, a bit closer to being able to compete for the kind of high quality jobs that will continue well into the 21st Century.

Let me be blunt about it. ASiMI is in Montana because Montana Power Co. was able to structure a market-based electrical power contract for ASiMI that effectively competed with the other low cost power suppliers in the Pacific Northwest. We had to beat out the other states and provinces. At this time, Washington, Oregon, Idaho and British Columbia, along with Montana have, overall, the lowest electrical costs in the nation. Our costs, even under the current regulated system, look good compared to, say, New England. But we are not in an economic competition with New England. We are in competition with many of our neighbors, and we must be able to show companies like ASiMI that they can do business in Montana and have a stronger bottom line than anywhere else.

Now, Montana Power Co. took the regulatory risk with ASiMI, and the Public Service Commission responded properly. But we are facing many more ASiMI's over the next few years and neither the Montana Power Co. nor the Public Service Commission should be operating in a world of "exceptions to the rule". We need to "change the rules", and that is exactly what SB 390 does.

Since ASiMI, we have engaged in serious discussions with another company that is a very large power user. Though the company will not be making its final plant construction decision for another 18 months to 2 years, I believe we have won the site-selection battle. But we were only able to do it because we were able to negotiate market-based power rates based upon the presumption by all (including the company) that by the time they came on line, market-based electrical power costs would be the "rule" not the "exception".

And we are in discussions even today with additional companies with like needs. We are now seriously on the economic development "radar screen". If we are to compete for these kinds of jobs, we must move quickly and fairly to a market-based system. We must change the way we do business today, or we will be doing much less business in the future.

Make no mistake about it -- SB 390 is about change. And change is usually frightening to behold and difficult to accept. As humans we are usually inherently resistant to change. Some change we can fight, because it is within our power to greatly affect or stop the change. But some change is inevitable -- beyond our power to stop. Such is the case when it comes to the movement toward a market-based electrical power industry. Congress and other states are leading us into a "Brave New World" of market-based power costs and we cannot stop this change from happening.

This change is like a giant wave. We, as a state, have two choices. We can grab a surfboard and ride the wave of change, safely reaching the shores of a market-based system. Or, we can struggle against the wave of change, only to drown in its crushing strength.

We must not only safely reach the shores of market-based power costs, but we need to reach there in a competitive timeframe. Delay is not the answer. Waiting for two years to enter this inevitable journey, will only put us behind other states in the critical battle to secure good, high quality 21st Century jobs that depend heavily upon the low cost of electrical power.

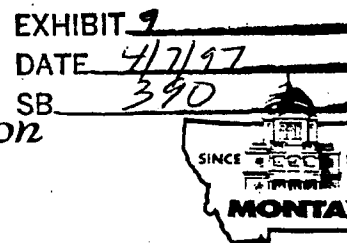
SB 390 is the surfboard by which we, as a state, can safely navigate through this wave of change. It is a surfboard that is being shaped today and in this Legislative session by the people -- through you, their elected representatives. If, as we head into these market-based waters, we find that the surfboard needs to be shaped a little differently, then you can reshape the board by reshaping the provisions of SB 390 during the Legislative sessions in 1999 and 2001. And, if you need to reshape SB 390, it will be based upon real world experience, not abstract study.

You can protect the small power user as well as the large industrial customer as we move toward market-based electrical power costs. SB 390 is the vehicle for doing that.

We urge you to pass SB 390 so that we can embark now on that inevitable journey to market-based electrical costs, and not get left behind as the wave approaches.

MONTANA TAXPAYERS Association

506 NORTH LAMBORN - HELENA, MONTANA 59601



CHASE T. HIBBARD, *Chairman*
DENNIS M. BURR, *President*

P. O. BOX 4909, HELENA MT 59604

(406) 442-2130

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To: Members of the House Appropriations Committee
From: Dennis Burr
Subject: Testimony in Support of Senate Bill 390
Date: April 7, 1997

A number of legislators have asked me to provide a statement regarding the tax implication of SB390 on state and local governments in Montana. I have reviewed the bill and it is my opinion that there are no tax consequences of SB390. The bill will provide Montana government and specifically the Montana Public Service Commission with the tools necessary for an orderly implementation of competition in the electric utility industry; a process that will occur with or without Senate Bill 390.

Future legislatures will need to consider changes in the way Montana taxes the utility industry as a result of competition but not because of the orderly transition provided by SB390. Montana, and most other states, have taxed regulated monopolies, such as electric utilities, at higher rates than other commercial and industrial properties. The requirement that these monopolies provide uninterrupted services has also resulted in construction or purchase of power supplies that may not be economic in a competitive environment. As monopolies, these firms were permitted to recover the reasonable costs associated with discriminatory taxes and higher cost, uninterrupted power supplies through the rate structure paid by the customers. SB390 will allow Montana utilities to recover some, but not all of the stranded costs associated with high cost power supplies. SB390 does nothing to address property taxes paid to state and local governments that may be higher than taxes paid by competitors of Montana utilities. Since the bill is silent on these matters, utilities with property in Montana will continue to be assessed and taxed in the same manner as they were assessed and taxed as regulated monopolies.

The tax issues that require consideration in future years as a result of competition for electric customers involve both intra-state and interstate costs. Under present law, investor owned utilities that operate in more than one county or state pay property taxes based on a classification rate of 12%. Power producers that do not cross county lines pay taxes based on a classification rate of 3.86% for real property and 7% for machinery and equipment. The higher tax rates for centrally assessed investor owned utilities will hamper their ability to engage in price competition with power providers in Montana that are subject to lower tax rates. A similar problem exists with competition from power providers whose property is located in other states. To the extent that property taxes on investor owned utilities in Montana are higher than those imposed in other states, Montana utilities cost of providing service will be higher than out-of-state companies that compete for customers in our state. Competition will require that the Montana Legislature consider this problem but, again, it is not the subject of, nor is it addressed by Senate Bill 390.

There are several methods of addressing the tax inequities that will result from competition in the electrical production and distribution industries. These issues will be the subject of a study conducted by the Revenue Oversight Committee as provided for in SB390. It is my belief that competitive tax treatment of interstate and intra-state electrical power supplies can be achieved without serious disruption to Montana's state and local tax system. But again, I emphasize that these matters are the result of competition in the industry, not the result of the orderly transition to competition contained in SB390.

Customers Must be Protected in Electric Industry Redesign
By Public Service Commissioners Bob Anderson and Bob Rowe¹

Montana Power Company's Senate Bill 390 would "restructure" the electricity industry to the advantage of the company's shareholders and large industrial customers. Small business and residential customers aren't so lucky. They'll probably end up with inadequate protection against weakly regulated monopolies.

SB 390 is not for competition. It is for Montana Power Company's recovery of costs.

We support customer choice and competition in the electric industry for big and small customers. But with customer choice must come strong protections to assure that workable competition develops and that it benefits all Montana citizens.

Workable competition requires a number of companies competing, probably at least five, with no one company having the lion's share of the market. When a market does not have robust, workable competition, prices are too high. Efficiency and service are too low. It's hard to develop workable competition in a monopoly industry, especially one based on a complex network of wires, substations and other facilities. Workable competition for generation in the wholesale power market (sales to utilities or very large customers) is now starting, but has taken twenty years to develop. Workable competition for retail customers, small businesses and residential customers, is a long way off.

SB 390 is tilted in favor of MPC and its shareholders and against customers and new competitors. The bill locks in place too many detailed decisions. If SB 390 passes it will be hard to adjust to the rapidly-changing electric industry.

MPC wants customers to pay all "stranded costs." These are costs, such as expensive generating plants, which cost more than they would be worth if purchased today. SB 390 would also create a "securitization" program and issue bonds to recover these costs. No state has experience using this new idea.

¹Bob Anderson represents PSC District 3 (Helena, Great Falls, and surrounding counties). Bob Rowe represents PSC District 5 (the six northwest counties, including Missoula and the Flathead Valley).

Too detailed legislation will limit the Public Service Commission's ability to respond to rapidly-changing market conditions and federal law. It will also remove complex issues from the contested-case forum and decide them in advance. Most states are moving ahead with electric restructuring primarily through public service commission proceedings. The states which have passed legislation (New Hampshire, Pennsylvania, Rhode Island, and California) all have very high electricity prices.

Montana has very low retail prices. Done right, workable competition could help lower those bills more. Done wrong, retail customers would not benefit from competition. Done wrong, customers would lose many of the protections against monopoly power now provided by the PSC. SB 390 does it wrong.

Legislation setting out general policy guidelines would minimize the risk of legislative error. We favor a flexible approach which would:

1. State that all customers should receive retail choice at the same time, rather than allow some customers to go first and get cheap power while it lasts.
2. Authorize the PSC to have large customers who leave the system pay "exit fees" to help cover costs.
3. Maintain the "public benefits" of low income protection, energy efficiency, renewable resources, and research and development, according to the compromise of the Northwest Comprehensive Regional Review.
4. Give the PSC authority to license electricity suppliers.
5. Give the PSC broad authority to address stranded cost issues.

House Bill 614, introduced by Rep. Carly Tuss (D-Black Eagle), is much simpler than SB 390. It does what is needed now without locking in detailed decisions which may not make sense in a few years.

A second best approach is for the Legislature not to act this session. The PSC would continue with its public restructuring process, already under way, and continue to participate in regional and national restructuring efforts. The PSC would act on Montana Power Company's December, 1996, corporate restructuring filing in a contested case, and carefully analyze all positions.

A third-best approach is a two-year legislative study, while allowing the PSC to proceed with restructuring cases for investor-owned utilities.

The least satisfactory approach is to pass inflexible, flawed legislation like SB 390 which tips the balance against customers and against real electric competition.

However, if SB 390 is passed, the following changes are necessary to be fair to ordinary ratepayers.

Stranded costs recovery. SB 390 requires ratepayers to pay all stranded costs. Instead, legislation ought to let the PSC decide, after a contested case, how much stranded costs are and who should pay them. Utility stockholders and bondholders have already received from ratepayers a higher return on their investment to pay them for some risk. With full stranded cost recovery, ratepayers could pay again, shifting investment risk from shareholders to customers. It's an issue best decided in a contested case.

System benefits. Utility revenues dedicated to the "Universal System Benefits Charge" will help pay for low income assistance, energy efficiency, renewable resources and research and development. SB 390 should honor the compromise struck in the Northwest Comprehensive Regional Review, which recommended USBC of 3 percent utility revenue plus low income bill assistance, not 2.4 percent, including low income programs. Sen. Barry Stang (D-Superior) offered a good amendment, which was defeated, allowing either the PSC or an electric cooperative's board to set the charge within that range.

Rate cap or reduction. The bill should reduce or cap rates through the transition period. The "rate cap" in SB 390 has too many loopholes.

Customer Choice. All customers should have choice at the same time. Because of problems with metering and billing, it will probably take longer for customer choice to work for residential and small business customers. However, there is no good reason why these small customers should not get customer choice until four years after the "big dogs" chow down on the current surplus of cheap power.

Market Power. After the transition, most customers will still need protection from market power. Rather than workable competition the bill could result in a weakly regulated monopoly at the retail level, and rates too high for ordinary customers.

10

Self dealing. The PSC must be able to adopt rules to protect customers and competitors from a large utility's ability to shift costs back and forth from one affiliated company to another.

Transition Advisory Committee. SB 390 creates a cumbersome "Transition Advisory Committee." It is weighted in favor of present monopolies, with possible competitors and customers poorly represented.

We acknowledge the good faith efforts of MPC and the bill's sponsors, Sen. Fred Thomas (R-Stevensville) and Sen. John Harp (R-Kalispell), to improve the bill. However, SB 390 does not promote competition and is not in the best interests of Montana citizens. Far better would be legislation establishing state policy in favor of competition and doing only what is necessary to implement that policy.

MontPIRG

The Montana Public Interest Research Group
360 Corbin Hall Missoula, Montana 59812 (406)243-2908

April 7, 1997

Mr. Chairman, members of the committee,

For the record I am Tara Mele representing the Montana Public Interest Research Group. More importantly I am representing our 3,300 state wide citizen members. Many times this session I have tried to be the protector of the small voiced consumer, the low income, the powerless. I have done so because MontPIRG believes in standing up for the minority. I believe it is right and necessary in a free society that all these interests are represented at the table. However, today I am here to represent those people that make up our membership base. Today I am here to represent middle class Montanans. It is necessary to point this out because although we have brought up the right and need for conservation and low income protection we have not said enough about those **average** consumers. How about the ordinary citizen that is not an environmentalist or low income crusader. They must also matter in this equation because they too will have to pay the price if this legislature rushes blindly into deregulation led only by the seeing eye dog of industry.

After all this being said MontPIRG is nevertheless concerned with the Universal Systems Benefits Charge (USBC) allocation in Senate Bill 390. 2.4% is too low and quite frankly insulting. We would like to see a minimum of 3.0% but preferably 3.5% designated as a USBC.

What we are most concerned with in this bill is the sunset provision on the USBC. We would like to see this sunset language stricken from the bill. If this is not possible how about coupling the sunset on the USBC with the stranded cost allocation. In other words as long as consumers must pay for stranded costs industry must accommodate low income assistance. However, we feel that conservation must continue to be protected for the long haul, after all, the natural environment is the one interest that can not be present at the table to speak to her to interests.

The idea of coupling brings up an interesting question that I would like to throw out to the committee for you to consider. *Should the USBC be unbundled? Should we separate the apples and oranges of conservation and low income assistance?*

There is so much more to be said but I will not run the risk of being repetitive, there are many others to speak to the bill. MontPIRG does not support moving forward, we would like to see the issue studied much more carefully. More importantly we would like to see the issue carried to many more citizens and an invitation extended for their participation.

This bill has been written by industry to benefit industry. This bill is like an old sock full of loopholes that are in great need of darning. *Is it acceptable to us, ordinary consumers, the average Joe's, to have industry dictate to us our utility future?* We urge you to oppose Senate Bill 390.

Amendment 1

Section 22. Universal systems benefits programs.

- (2) On or after January 1, 1999, ~~2.4%~~ 3.2% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal systems benefits programs....

Amendment 2

Section 22. Universal systems benefits programs.

- (2)~~Unless modified as provided in subsection (12), this funding level remains in effect until July 1, 2003.~~

TESTIMONY OF DICK PATTISON, PRESIDENT
MONTANA SENIOR CITIZENS ASSOCIATION
BEFORE THE SENATE TAXATION COMMITTEE, 1997 LEGISLATURE
MARCH 13, 1997

Mr. Chairman, members of the committee:

For the record, I am Dick Pattison, president of the Montana Senior Citizens Association. I am here today representing MSCA in opposition to Senate Bill 390. While opposing this bill, we take note that it does contain some protections for our rural electric cooperatives. Created by Montanans starting more than 60 years ago, these pioneering efforts to bring electric power to rural areas spurned by the investor owned utilities or IOUs deserve our continued support.

We believe they shouldn't need these protections, that we should not be disemboweling our Public Service Commission which over the years has helped to keep electric rates among the lowest in the nation for consumers. Yet, we now have a bill before you that would box the PSC into a corner, unable to provide the service to Montanans that the PSC was created to provide.

While we have heard rumors, comments and gratuitous "leaks" about this bill, it surfaced only last Friday, three business days before this hearing. There is no way on earth that anyone can digest and evaluate a piece of legislation as important as this in only three days unless you were among the privileged few with inside information.

We have to ask: "What's the rush?"

This bill is premature. Congress has taken no action. There is no federal legislation that this bill can bring Montana into line with. Some bills died in the last session of Congress related to utilities. Two have been introduced in this session, but action is not likely for nearly two years. At the very least, Montana should wait and see what the Congress is going to do in this area.

Exploring the meaning of transition costs alone should require several days of hearings. Will we be forced to pay for so-called stranded assets--the bad investments some utilities made such as nuclear power plants--when some conglomerate takes over Montana Power Co.? Are there protections for consumers against such a possibility? Will this permit IOUs to charge customers rather than stockholders for replacing outmoded or worn out facilities, lines etc.?

On a personal note I have great respect for Montana Power Co. A former president was godfather to my oldest son. My wife and I are minor stockholders in MPC but we don't believe that as investors we should shift the cost of poor management decisions on to the customers. That should come out of dividend earnings.

We in the United States already have the lowest cost electric power in the world at an average 5 cents per kilowatt hour, compared with 12 cents in Germany or 17 cents in Japan. In Montana, our rates are comparable to the U.S. average at 5.5829 cents for the first 400 residential kilowatt hours. We believe the Montana Legislature should not set up Montanans so that low cost Montana electricity will be shipped elsewhere and costs to Montana consumers go up.

Business columnist Jane Bryant Quinn cautions: "Watch out, as marketing of electricity becomes North America's most costly and risky business." Not a soul knows how it will turn out.

Just six months ago the members of Montana Senior Citizens Assn. at their Annual Meeting unanimously adopted a resolution and gave it No. 2 priority behind opposition to a sales tax which reads in part:

"Whereas, private conglomerates are chomping at the bit to get their chance at this lucrative electricity market, and

Whereas, a great many senior citizens and low income families are on fixed incomes and have no way to combat the loss of reasonably priced electric power, now therefore

Be it resolved that the Montana Senior Citizens Association opposes any deregulation of electrical utilities and will seek the active support of AARP and other organizations so that we can send a message to Congress that deregulation is unwise and intolerable."

The very least this Legislature can do in fulfilling their responsibility to represent we the people, is to not approve this bill and then take the time, the next two years, for a careful, thoughtful, well researched study, keeping the people of Montana, their welfare and their environment as the first and foremost responsibility in your deliberations. My 3,000 cosigners and I thank you for this opportunity to present some of our concerns for your consideration.

TESTIMONY BY ARCHIE NUNN, SILVER STAR
BOARD MEMBER, MONTANA SENIOR CITIZENS ASSOCIATION
BEFORE THE SENATE TAXATION COMMITTEE
IN OPPOSITION TO SB 390
March 13, 1997

EXHIBIT 13
DATE 4/7/97
ON 390

I am Archie Nunn of Silver Star, Montana. I immigrated to Montana from the Show Me State of Missouri in 1929. Except for three years during World War II Montana has been my home! And I love it!

I am in total opposition to Senate bill 390, for the following reasons:

1. We are living in a world of reality, not a fantasy world that seeks the utopia in Milton Friedmans economic theory that competition creates lower prices for the consumer.

2. Service utilities that provide basic living needs should be regulated to assure heat, power and light at affordable rates!

3. Consumers should not have to pay for bad business decisions of a corporation that is financed by private stockholders.

Stockholders buy stock with the assumed risk of administrative and management errors in judgment and honest mistakes! I am referring to so-called stranded assets and hidden unknown costs, the transition costs that this bill says belongs to the consumer.

4. It seems to say there is may be some authority left to our PSC. However, it is spelled out in ambiguous and vague language.

5. I see no monetary provision for the licensing and policing of the so called retail utility to prevent fraud and slamming. The recovery of fraudulent damages to the consumer is up to the individual.

6. This issue is so complex and SB 390 so lengthy a document. It is really unfair to expect our legislators to digest and debate with intelligence the merits or demerits of this bill with any degree of accuracy.

7. Historically we have the reality of comparable utilities that serve our state. The telephone, airlines, savings and loans are prime examples of good intentions gone astray. I am sure that most of our legislators are aware of Mark O'Keefe's on going battle with the deregulated communications industry.

8. As a consumer of Vigilante Rural Electric Cooperative. I am concerned about our status as a non profit agency, if and when they start wheeling power for profit retailers.

9. Under section 31, it appears that we the consumer must underwrite - or cosign, if you will the indebtedness of transitional financing.

10. What happens to our tax base during this transition period. It looks to me like another tax base loss.

11. Does anyone really believe the new retail utilities will accumulate any tax base at all? With today's technology and an enterprising CEO could handle it all from his house in Sheboygan or other geographic areas, with no tax base in Montana.

I respectfully thank this courageous committee for listening and pray that your will remember the consumer, especially the residential consumer. Please don't sell us into bondage to Wall Street.

Thank you

Archie Nunn
Box 6
Silver Star, MT 59751



ACTION ALERT !!!!!

FYHIDIT 14
DATE 4/7/97
SB 390

MONTANA SENIOR CITIZEN ASSOCIATION MEMBERS AND FRIENDS:

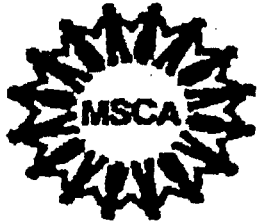
Ask your legislator to vote against **SB 390** which will deregulate electric utilities.

Senate **Bill 390** is Montana Power Company's legislation designed to benefit its shareholders and large industrial customers. Ratepayers, not company shareholders, will bear the entire burden of paying Montana Power's debts for uneconomical plants. This could be a billion dollar bailout.

- ★ Pick up your phone and dial **444-4800** (the general public number for the Montana Legislature) and leave word for your local senator and representative to vote **against SB 390**
- ★ Write a brief note to your local representative or senator, urging them to vote **against SB 390**, at Capitol Hill Station, Helena, MT 59620
- ★ Ask at least one friend of yours in your area to call and/or write their senator and representative about **SB 390**



Please act quickly!!!



**Montana Senior
Citizens Association
P.O. 423
Helena, MT 59624**

17
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Helena, Montana**

**Your power bill may go to fund a
BILLION DOLLAR BAILOUT
for big business
unless you ACT NOW to kill SB 390!**

EXHIBIT 15
DATE 4/7/97
SB 390

MONTANA SENATE BILL NO. 390

GOOD MORNING, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS WILLIAM LYON; I AM AN EMPLOYEE OF FEDERATED DEPARTMENT STORES AND APPEAR TODAY SPEAKING ON BEHALF OF FEDERATED AND THE MONTANA RETAILERS' ASSOCIATION. I APPEAR TODAY IN OPPOSITION TO SENATE BILL 390, IN ITS PRESENT FORM.

FOR THOSE OF YOU WHO MAY NOT RECOGNIZE THE NAME "FEDERATED", THE COMPANY THAT OWNS MACY'S, BON MARCHE, AS WELL AS OTHER STORES. WE OPERATE OVER 500 STORES NATIONWIDE, INCLUDING IN MONTANA. THE COST OF ELECTRICITY IS A MAJOR COST OF DOING BUSINESS FOR OUR STORES AND IS OF SIGNIFICANCE TO THOUSANDS OF PEOPLE EMPLOYED BY FEDERATED, AND THEIR FAMILIES. FEDERATED HAS BEEN ACTIVE IN PROMOTING COMPETITION IN THE ELECTRIC INDUSTRY FROM CALIFORNIA TO NEW HAMPSHIRE BY WORKING WITH OTHER LOCAL RETAILERS. WE REMAIN COMMITTED TO BRINGING ALL CUSTOMERS CHOICE IN ELECTRICITY SUPPLIERS AT THE EARLIEST POSSIBLE DATE.

SENATE BILL 390, IF ENACTED INTO LAW AS DRAFTED, WOULD RESULT IN A RESTRUCTURING OF THE ELECTRIC UTILITY INDUSTRY IN MONTANA IN NAME ONLY. MEANINGFUL COMPETITION WOULD BE THE SAME; UTILITIES WOULD, IN EFFECT, RETAIN THEIR MONOPOLY STATUS. IF YOU WANT THE BENEFITS OF COMPETITION, THIS BILL MUST BE AMENDED. FRANKLY, THIS BILL APPEARS TO HAVE BEEN WRITTEN BY THE UTILITY INDUSTRY FOR THE BENEFIT OF THE UTILITY INDUSTRY, AND **NOT** AS A VEHICLE TO BRING COMPETITION TO MONTANA.

ALL CUSTOMERS AT SAME TIME

LET ME TELL YOU THE AREAS OF GREATEST CONCERN TO OUR RETAILERS' GROUP. FIRST AND FOREMOST, THE BILL DOES NOT GIVE ALL CUSTOMERS OPEN ACCESS TO COMPETITION AT THE SAME TIME. ONLY CUSTOMERS TAKING 1,000 KILOWATTS OR MORE WOULD BE ELIGIBLE TO CHOOSE A SUPPLIER BEFORE 2002. [SEC. 5] THAT MEANS ONLY A VERY LARGE BUSINESS COULD TAKE ADVANTAGE OF CHOOSING A SUPPLIER. TO PUT THIS IN PROSPECTIVE FOR YOU, OUR TWO BON MARCHE STORES IN MONTANA EACH HAVE A LOAD OF LESS THAN 150 KILOWATTS. THERE IS NO LEGITIMATE REASON TO PERPETUATE A SYSTEM WHERE THE LARGEST CUSTOMERS GET RATE BREAKS, WHILE RESIDENTIAL AND SMALL BUSINESSES PAY HIGHER RATES. WE BELIEVE **ALL** CUSTOMERS SHOULD BEGIN OPEN ACCESS ON THE SAME DATE. OUR CUSTOMERS AND OUR EMPLOYEES HAVE AS MUCH RIGHT TO BENEFIT FROM OPEN ACCESS AS SOME LARGE BUSINESS, EVEN MORE SINCE THEY HAVE PAID HIGHER RATES FOR A LONGER PERIOD OF TIME.

TRANSITION COST RECOVERY

THE BILL WOULD REQUIRE EACH UTILITY TO CHARGE CUSTOMERS A "TRANSITION CHARGE", WHICH IS INTENDED TO RECOVER FOR THE UTILITY ALL GENERATION AND ELECTRICITY SUPPLY COSTS THAT "BECOME UNRECOVERABLE" IF THE BILL IS ENACTED. [SEC. 3(22)] THIS IS WHAT IS COMMONLY REFERRED TO AS "STRANDED COSTS" IN MOST OF THE COUNTRY. SENATE BILL 390 IS FAR TOO GENEROUS IN WHAT WOULD BE ALLOWED AS STRANDED COSTS. LET ME GIVE YOU SOME EXAMPLES.

1. AS DRAFTED, S.B. 390 PERMITS UTILITIES TO SEEK RECOVERY OF TRANSMISSION AND DISTRIBUTION COSTS AS TRANSITION CHARGES. SINCE T&D WILL CONTINUE TO BE REGULATED MONOPOLIES, ASSOCIATED COSTS SHOULD NOT BE VIEWED AS STRANDED.

2. THERE IS NO REQUIREMENT FOR PRUDENCE REVIEW BEFORE A COST CAN BE INCLUDED IN THE TRANSITION CHARGE: IT MUST ONLY BE "VERIFIABLE". CUSTOMERS SHOULD NEVER HAVE TO PAY FOR UTILITY MISTAKES, EVEN WHEN THE COSTS ARE VERIFIABLE.

3. THERE IS NO REQUIREMENT FOR A SHARING OF THE TRANSITION COSTS BY UTILITY SHAREHOLDERS. TRADITIONALLY, REGULATORS HAVE BEEN REQUIRED TO BALANCE THE INTERESTS OF CUSTOMERS AND SHAREHOLDERS WHEN SETTING RATES AND UTILITY RATES OF RETURN. S.B. 390 REMOVES ANY BALANCE. INSTEAD, THE BILL WOULD SOCIALIZE ALL

UTILITY COSTS, WHILE CAPITALIZING THE GAINS. JUST AS CUSTOMERS HAVE PAID FOR THE UTILITY SYSTEM FOR YEARS, SHAREHOLDERS HAVE BENEFITED FROM THE PROTECTIONS PROVIDED BY REGULATION. AS A NEW ERA EMERGES, THERE IS NO JUSTIFICATION FOR ABANDONING THE BALANCING OF INTERESTS BEFORE THE STRANDED COSTS ARE PAID.

4. THE REQUIREMENT THAT VALUE OF UTILITY ASSETS BE ESTABLISHED BY "A COMPETITIVE BID SALE" IS A FARCE. [SEC. 12(2)(B)(III)] THE BILL PROHIBITS THE COMMISSION FROM REQUIRING A DIVESTITURE OF ASSETS [SEC. 8(2)]. WITHOUT A NON-REVOCABLE COMMITMENT THAT THE ASSETS WILL BE SOLD, THIS PROCESS WILL NOT ATTRACT LEGITIMATE BIDS. THEREFORE, THE TRUE MARKET VALUE OF THE ASSETS WILL NOT BE KNOWN, WHICH WOULD MOST LIKELY RESULT IN AN OVERSTATEMENT OF THE STRANDED COSTS.

THE TRANSITION COSTS WOULD NOT BE ASSESSED FAIRLY ON CUSTOMERS. NEW LARGE CUSTOMERS -- THOSE WITH LOADS OVER 1,000 KILOWATTS -- BEGINNING SERVICE ON JANUARY 1 OF THIS YEAR OR LATER WOULD **NOT** PAY ANY TRANSITION COSTS, BUT SMALL CUSTOMERS DO NOT SHARE THAT EXEMPTION. [SEC. 12(3)] AGAIN, THERE IS NOT JUSTIFICATION FOR EXEMPTING LARGE CUSTOMERS AND FORCING RESIDENTIAL AND SMALL BUSINESSES TO PAY THESE COSTS.

ALSO, THE BILL PERMITS CUSTOMERS WHO GENERATE THEIR OWN ELECTRICITY TO ESCAPE PAYING THE TRANSITION COSTS. [SEC. 12(3)] THERE IS NO REQUIREMENT FOR 100% SELF-GENERATION. THAT MEANS, AS DRAFTED, ANYONE WHO GENERATES **ANY** OF THEIR OWN ELECTRICITY WOULD **ESCAPE** PAYING FOR STRANDED COSTS. THIS SHOULD NOT BE PERMITTED.

UTILITY RESTRUCTURED

THE BILL REQUIRES UTILITIES TO SEPARATE GENERATION FROM TRANSMISSION AND DISTRIBUTION, BUT DOES NOT GO FAR ENOUGH. UTILITIES WOULD BE PERMITTED TO OPERATE AS THEY DO TODAY, SIMPLY BY SETTING UP A COUPLE OF CORPORATIONS UNDER ONE PARENT COMPANY. THE IMPRESSION THIS BILL IS SUPPOSED TO CREATE IS THAT THE UTILITIES WOULD BE BROKEN UP: THE GENERATING COMPANIES WOULD COMPETE FOR CUSTOMERS; THE TRANSMISSION COMPANIES WOULD PROVIDE A PATH FOR ELECTRONS TO ALL SUPPLIERS; THE DISTRIBUTION COMPANY WOULD BOTH PROVIDE DISTRIBUTION SERVICES TO ALL SUPPLIERS, AND PROVIDE ELECTRICITY TO CUSTOMERS WHO DO NOT CHOSE AN ALTERNATIVE SUPPLIER, EITHER BECAUSE THEY ARE NOT PERMITTED TO OR BECAUSE THEY OPT NOT TO. THAT IS NOT WHAT WILL HAPPEN UNDER S.B. 390.

THE DISTRIBUTION COMPANY WOULD BE PERMITTED TO DIRECTLY BUY ELECTRICITY FROM THE GENERATING COMPANY. THE BILL LACKS A PROHIBITION AGAINST THE DISTRIBUTION COMPANY SHARING CUSTOMER INFORMATION WITH THE SISTER COMPANY HOLDING THE GENERATION ASSETS. UNDER THIS SCHEME, THE GENERATION AND DISTRIBUTION COMPANIES CAN BE SEPARATE IN NAME ONLY.

THE DISTRIBUTION COMPANIES SHOULD BE REQUIRED TO BUY ELECTRICITY FROM A THIRD PARTY THAT OWNS NO GENERATION, BUT ACTS AS A POOL AGGREGATOR. THAT WAY, THE DISTRIBUTION COMPANY WOULD BE INDIFFERENT TO THE SOURCE OF ELECTRICITY IT DELIVERS TO ALL CUSTOMERS.

CUSTOMER OWNS METER INFORMATION

THERE MUST BE A CLEAR PROHIBITION ON THE RELEASE OF **ANY** CUSTOMER INFORMATION TO ANY ENTITY, EXCEPT AS AUTHORIZED BY THE CUSTOMER. FURTHER, THE BILL SHOULD ESTABLISH THAT THE CUSTOMER OWNS THE INFORMATION ABOUT HIS OR HER USAGE, HAS AN ABSOLUTE RIGHT TO RECEIVE THAT INFORMATION, AND CONTROLS ITS DISSEMINATION. THIS MUST INCLUDE ALL PULSE AND LOAD DATA.

ADVERTISING

FINALLY, THE BILL **REQUIRES** UTILITIES TO RUN A CAMPAIGN TO "EDUCATE THE PUBLIC", AND ARE PERMITTED TO RECOVER THE COSTS AS PART OF THE TRANSITION CHARGES. [SEC. 7(4)] THIS IS NOTHING SHORT OF AN INVITATION FOR THE EXISTING UTILITIES TO ADVERTISE UNDER THE GUISE OF PUBLIC EDUCATION. ANY EDUCATION EFFORT

SHOULD BE CONDUCTED BY THE COMMISSION, NOT BY THE UTILITIES, AND THE EXPENSE SHOULD BE SPLIT BETWEEN THE CUSTOMERS AND THE SHAREHOLDERS. BESIDES, SINCE THE VAST MAJORITY OF CUSTOMERS WOULD NOT BE ABLE TO CHOSE A SUPPLIER FOR ANOTHER FIVE YEARS, THERE IS LITTLE NEED FOR AN EDUCATION PROGRAM TODAY.

CONCLUSION

IN CONCLUSION, LET ME SAY ONCE MORE, WE SUPPORT MAKING THE ELECTRIC INDUSTRY COMPETITIVE. WE BELIEVE ALL CUSTOMERS WILL BENEFIT FROM COMPETITION AND THE SYSTEM WILL BE STRONGER WHEN IT IS FORCED TO KEEP COSTS LOW AND SERVICES HIGH TO KEEP CUSTOMERS SATISFIED. THAT IS WHAT WE IN RETAIL MUST DO EVERY DAY. WE BELIEVE ALL CUSTOMERS SHOULD HAVE OPEN ACCESS ON THE SAME DATE IN 1998.

SENATE BILL 390 HAS SERIOUS FLAWS AND SHOULD BE AMENDED BEFORE BEING VOTED ON. THE RETAILERS' ASSOCIATION IS WILLING TO ASSIST THE COMMITTEE AND TO MEET WITH ALL INTERESTED PARTIES IN AN EFFORT TO FASHION A BILL THAT IS FAIR TO CUSTOMERS AND THE UTILITIES.

THANK YOU.



SB 390

Montana House Appropriations Committee

April 7, 1997

Renewable Northwest Project

Renewable Northwest Project

*A project of the Northwest
Conservation Act Coalition*

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Research Group

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Proven Alternatives, Inc.

Sierra Club

Solar Energy
Association of Oregon

KENETECH Windpower

Washington Environmental
Council

Testimony of the Renewable Northwest Project

Rachel Shimshak, Director

Peter West, Senior Associate

The Renewable Northwest Project (RNP). RNP is a regional organization dedicated to promoting the implementation of new renewable resources such as solar, wind, and geothermal in the Northwest. Our organization is sponsored by resource developers, environmental and consumer groups. RNP participated in all aspects of the Comprehensive Review of the Northwest Energy System, which met at the request of the four Northwest governors and negotiated a compromise set of recommendations on electricity restructuring.

Rachel Shimshak was one of the 15 individuals chosen by the Governors to lead the year-long process. During part of that year Rachel chaired the work group on public purposes along with Jim Davis of the Douglas County PUD in Washington.

With the help of the 100 or so regular work group participants, and a significant amount of public testimony throughout the summer and fall, the members of the Regional Review identified a strategy for maintaining our regional commitment to invest in conservation, new renewable energy resources, and low income services in a way that is compatible and consistent with a competitive market. The goal we tried to achieve was to rely on the market wherever possible, but to target investment to overcome market failures, and maximize the local control of those investments.

The final recommendation was for each state to establish a statewide, minimum investment standard of 3% of total retail revenue, while allowing for the maximum amount of local control. That balance won the support of the aluminum, industrial, public and private utility members of the Review, and along with many other important issues, resulted in the compromise report. I hope the final report recommendations will earn your support as well.

The bill that is before you, SB 390, falls short of the Regional Review's compromise on public purposes. Unless and until it is consistent with the Review's recommendation to reserve 3% of total retail revenue for conservation, renewables and low income services, we cannot support it.

The goal of the Regional Review was to identify some policies and programs that would allow the region to work together to deal with a changing electricity industry and preserve the many system benefits we now enjoy. While it is important for each state to do what is right for the state, it is also important to create mechanisms that are consistent with the rest of the region. The compromise we supported in the Review, along with all of the other constituencies, included a 3% minimum standard for public purposes that applied to all retail distribution companies and direct service customers.

The provisions made in the Review to allow large customers to get credit for new conservation investments made in their own facility was key to gaining their support for the compromise. While we personally did not support the policy that implied, we thought it was a fair compromise and, as part of the package, it ultimately won our support. In addition, the specific percentages of the 3% to be spent on conservation, renewables, and low income services were key to gaining our support for the package. We believe that the Regional Review compromise will deliver both economic and environmental benefits if implemented, and we urge you to give it your support.

The 3% standard establishes a minimum for environmental protection and for covering the risks of price volatility, resource availability and consumer protection. We agreed to this minimum level in the hopes that this standard could be used to ready the market to effectively react to future uncertainties and to imbed in the new market critical values that can maintain our cherished quality of life in the region. Without a realistic standard the market will not effectively hedge risks or consider long-term least cost and environmental risk.

Today, I want to spend a few minutes talking about renewable resources. Renewable energy resources are those that are naturally occurring and inexhaustible, such as solar, wind and geothermal. Montana stands out as one of the states with the greatest potential for wind development in the country. That potential provides an opportunity for environmentally responsible jobs, and leadership for the state.

Renewable energy has a long history in the region. It is recognized as a priority resource for the region in the 1980 Federal Power Act, and indeed the low rates and clean air we enjoy in the Northwest are primarily due to the forward looking energy investments made in our hydro base. Renewable resources are a public purpose because they create benefits we all share, such as clean air, stable rates, and long-term low cost

power. Because these resources face market barriers, public policy support is necessary to ensure their implementation in a changing electricity system. Without this support the new market, because of its design and short-term pressures, will not be able deliver renewables in a meaningful way or when needed.

The benefits of renewable energy are many. Solar, wind and geothermal resources have no fuel costs and therefore eliminate the uncertainty and expense of future fuel price increases. They lower our dependence on imported fuel supplies and keep good paying jobs in the region. They diversify our energy portfolio and stabilize rates for the long run.

Solar, wind and geothermal resources neither harm fish nor create the air, water and land pollution associated with fossil fuels. By contrast, just one current, midsize gas-burning plant emits the same amount of carbon dioxide as 188,000 cars. Nationally, between one-fourth to two-thirds of all air pollution comes from electricity production which distinguishes this industry's restructuring from telephones, airlines and trucks.

Renewable energy facilities work in harmony with the Northwest hydroelectric system. As the operations of hydro systems change to ensure fish survival, renewable energy sources can be used to replace lost capacity to keep the system clean. Once underway, these projects can help retire older, dirtier plants.

Renewable energy uses local resources, providing economic development benefits and jobs. Every 240 average megawatt (aMW) natural gas project sends \$28 - \$54 million out of the region annually to pay for fuel costs. Montana has the most wind and solar potential of any Northwest or West Coast state. You would be the state best positioned to take advantage of a renewable standard. Studies indicate that renewables create at least twice the number of jobs as natural gas plants and 100 aMW of wind power, alone, can translate into 400 jobs.

There are two principle reasons that renewable resources are at risk in a more competitive electricity system. First, renewable resources have high capital costs in the short-term, and low costs in the long-term. In a market that focuses on short-term costs, renewables are at risk. Second, renewables provide unique benefits such as environmental improvement, local economic development, and energy system diversity, which are not reflected in their price. If all energy resources were priced to reflect all of their respective costs and benefits, renewables would be competitive. But, with a system that only looks at the direct costs of resources in the very near term, and ignores long-term benefits, renewables are at a disadvantage.

We recommend that the state adopt a minimum investment standard that is implemented concurrently with retail choice. That minimum standard should have as

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much local control as practicable, and be non-bypassable. The standard should be consistent with the emerging energy market and be competitively neutral, which means that it applies to all market players. The Comprehensive Review recommends that the minimum standard be set at 3% of total retail revenues for the state, with a half of one percent dedicated to new renewable resources. We support that recommendation.

One half of one percent of retail revenues will help continue the momentum on renewables in the region. It will help secure the five projects in progress in the Northwest and create a foundation of new technologies on which a self-sustaining market can grow. It will help build capability and experience with these resources in the region to keep our renewable edge. It should place Montana in the forefront of renewable resource development. This modest investment will be an insurance policy against uncertain futures, such as fuel price spikes, and increased environmental restrictions.

The state has a very important role to play in ensuring that implementation of the standard is consistent across all utilities and the direct service customers. In addition, the state should work out a simple system for suppliers of electricity that provides basic information to consumers about their electricity, such as the type of generation, and its environmental characteristics.

Another important state responsibility is to certify what constitutes a "green" resource. New Hampshire ran a pilot program for 14,000 customers last year and was surprised to find that marketers were offering non-nuclear, gas, and Canadian hydro as "green" resources. Establishing the rules of fair play will be a key element to ensure that an evolving electricity market benefits all.

Finally, we need to preserve the role of local utilities to use their creativity and innovative ideas in determining the implementation strategy for public purposes.

The goal of any legislation dealing with electricity restructuring should be to create a system that produces both economic and environmental benefits. You have the rare opportunity, up front, to ensure that important investments for our future are not sacrificed in this changing market. Reserving 3% of total electricity revenues will help us build a more sustainable electricity system, keep the air clean, and maintain our quality of life in the region. This is about generation...the next generation.

Thank you.



EXHIBIT 17
DATE 4/7/97
SB 390

**Testimony of Nancy Hirsh, Policy Director
Northwest Conservation Act Coalition
on Senate Bill 390**

**Before the Appropriations Committee
Montana State House**

April 7, 1997

The Northwest Conservation Act Coalition (NCAC) is a coalition of 75 organizations in Montana, Idaho, Oregon and Washington. Our members range from environmental and consumer protection groups to energy efficiency businesses and utilities. In Montana, our members include the Alternative Energy Resources Organization, Human Resource Council, Missoula Urban Demonstration Project, Montana Environmental Information Center, Montana Rivers Action Network, Montana Public Interest Research Group, National Center for Appropriate Technology, and the Northern Plains Resource Council. NCAC opposes SB390, the Electric Utility Industry Restructuring and Customer Choice Act, as presently drafted.

Montana and the region as a whole need a careful transition to competitive electric markets if we are to maintain economic fairness, reliable service and a healthy environment. You are in the process of developing the rules to govern the electricity industry. If the rules for this new game are not sufficient then consumers, the economy and the environment will pay the price. It is critical that we get the new rules and conditions right. Rushing through a piecemeal package that does not have state-wide consensus is not in the interest of the citizens of Montana.

After the Comprehensive Review of the Northwest Energy System was convened by Governor Racicot and the other Northwest Governors, the steering committee spent almost a year grappling with the complex set of issues involving electric utility restructuring. Many important compromises were reached between the broad parties represented at the table. Montana's interests were well represented by Bob Gannon, Bill Drummond, and John Etchart, though NCAC recognizes that some of the state's interests were not represented in the Comprehensive Review. Last December, NCAC joined with Governor Racicot in praising the work of the steering committee and firmly supporting the fundamental principles established for public purpose funding, low income energy assistance, customer choice, and consumer protection.

NCAC and its member organizations are working in all four Northwest legislatures to encourage adoption of comprehensive legislation that reflects the compromise agreements of the Comprehensive Review. Absent a thorough approach to restructuring, NCAC supports establishing a study task force to develop mechanisms to implement the recommendations of the Comprehensive Review.

SB390 deviates significantly from the recommendations of the Comprehensive Review in several important areas detailed below:

Alliance to Save Energy
Alternative Energy Resources Org.
American Rivers
Citizens Utility Board of Oregon
Clallam-Jefferson Community
Action Council
Cold Springs Conservancy
Emerald People's Utility District
Eugene Future Power Committee
Eugene Water and Electric Board
Fair Electric Rates Now
Fair Use of Snohomish Energy
Friends of the Earth
Golden Eagle Audubon
Greenhouse Action
Greenpeace
Human Resources Council
Idaho Citizens Network
Idaho Conservation League
Idaho Consumer Affairs
Idaho Rivers United
Idaho Wildlife Federation
Kootenay-Okanagan Electric
Consumers Association
League of Women Voters - ID
League of Women Voters - OR
League of Women Voters - WA
Mason PUD #1
Mason PUD #3
Metrocenter YMCA
Montana Environmental
Information Center
The Mountaineers
Natural Resources Defense Council
Northern Plains Resources Council
Northwest Resource Information Center
Olympic Renewable Resources Assoc.
The Opportunity Council
Oregon Ecumenical Center for
Environmental Action
Oregon Environmental Council
Oregon Fair Share
Oregon Student Public Interest
Research Group
Portland Energy Conservation, Inc.
Rivers Council of Washington
Rocky Mountain Institute
Sacramento Municipal Utility District
Salem Electric Cooperative
Salmon For All
Seattle Audubon Society
Sierra Club
Sierra Club of Western Canada
Housing Authority of Skagit Co.
Snohomish County PUD
Solar Energy Association of Oregon
Solar Information Center
The Solutions Group
Spokane Neighborhood
Action Program
Tahoma Audubon Society
Tennessee Valley Energy
Reform Coalition
Union of Concerned Scientists
Washington State Assoc. of
Community Action Agencies
Washington Environmental Council
Washington Wilderness Coalition
Washington Public Interest
Research Group
Yakima Valley Opportunities
Industrialization Center
Associates
City of Ashland
Clark Public Utilities
Kenetech/Windpower
Northwest Natural Gas
Puget Sound Power & Light
R. Lynette & Associates
Washington Department of
Community Development
Washington Natural Gas
Washington Water Power

Energy Conservation, Renewable Resources and Low Income Weatherization

The transition to a more competitive electric utility industry may have the unintended consequence of shortening planning horizons and reducing incentives to invest in conservation and renewable resources. Mechanisms compatible with competition must be developed which will assure delivery of all cost effective energy conservation, provide adequate energy assistance to low-income households through weatherization and energy assistance, and secure development of non-hydro renewable energy resources to protect and enhance our environment.

SB390 establishes an annual funding level for universal system benefits programs (USBP) at 2.4% of utility annual retail sales revenues. Almost every aspect of the USBP violates the delicate compromise reached by the Comprehensive Review.

- The funding level of 2.4% is significantly below the 3.0% recommendation of the Review. NCAC believes that 3% of electric service revenues provides a level of funding adequate to the needs for conservation, renewable energy and low income weatherization in the State. NCAC proposed an optimal level of funding in the NCAC/Save Our Wild Salmon Blueprint to deliver all cost effective conservation, promote clean renewable energy and meet the needs for weatherizing low-income housing stock. That optimal level is closer to 4 1/2% of regional utility revenues. We agreed to the delicate compromise at 3% because we believed it could work even if it was not optimal. The lower funding level in SB390 is NOT workable.
- The definition of programs included in the USBP includes low income energy bill assistance. After much deliberation, the Review determined that a separate funding mechanism was appropriate and warranted for addressing low income energy bill assistance needs. The Comprehensive Review did not include low-income bill assistance in its 3% minimum investment requirement. Bill assistance should not be included in the USBP unless the funding level goes above 3%.
- The bill has no accountability for the utilities, large industrials, and the direct service industries (DSIs) that ensures that the programs they run (and get USBP credit for) are cost-effective, save energy, or address low income energy needs. NCAC is a strong supporter of local control if there is accountability that ratepayer funds are being efficiently and effectively spent. USBP investments should be for conservation measures that are not being captured by the market and for the above-market costs of renewable resources. Without strong accountability requirements the USBP may be used to fund investments that would happen anyway. NCAC recommends that the Committee go beyond the reporting requirements in SB390 and establish true accountability.
- The bill calls for the USBP to terminate in July 2003. This is 5 1/2 years less than the Comprehensive Review recommends. The ten year time frame recommended maintains the commitment to investments in public purposes at least through the full transition to a more competitive industry. NCAC recommends that an evaluation and review be conducted mid-way through the ten year program. NCAC supports the Comprehensive Review recommendation that in January 2009, the legislature recommend continuation, modification, or discontinuation of the USBP. Automatic termination is unwarranted. Only after careful evaluation, should the legislature continue, revamp or repeal the USBP.

Low-Income Energy Bill Assistance (Universal Service)

Electricity is an essential service and should be affordable and universally accessible to all residential customers, especially low and fixed income citizens who may be at special risk from a competitive electricity structure. Low-income energy bill assistance programs must be maintained and enhanced to assure that low and fixed income citizens are not disadvantaged by restructuring.

As stated above, inclusion of the energy bill assistance in the USBP with no additional funding above 3% is clearly inconsistent with the Comprehensive Review recommendation. NCAC urges the Committee to establish a minimum standard of assistance and a universal service fund to ensure that the standard is achieved. All qualified low income households should be eligible to receive bill assistance or rate discounts as needed to ensure that they do not pay more than five percent of their incomes for household energy services. This program, like those included in the USBP should have accountability and reporting requirements to ensure program effectiveness.

Consumer Protection and Education

Reliable electricity service must be maintained while ensuring public health, safety, and quality of life. A smooth and orderly transition to a competitive electric industry requires an informed and involved public. The education of customers section in SB390 will not prevent the problems with an uneducated customer class that have resulted from the telephone deregulation in electricity deregulation. NCAC recommends that in addition to utility sponsored customer education programs, the state work with a broad array of interested parties to develop and implement a standard consumer education program for the entire state. NCAC has a more detailed customer education recommendation that we will provide to the Committee under separate cover.

In SB390, the Public Service Commission (PSC) is vested with the responsibility for issuing rules to protect consumers from abusive practices. NCAC believes the Attorney General's consumer protection office should be involved with making the assessment as to what additional rules should be established. The PSC and the Attorney General's office should consider the following issues: credit terms, disconnection and reconnection of service, standardized billing information, redlining and discriminatory pricing, unfair trade practices and fraud, assessment of late and other such fees, application standards for service, billing for unregulated services, and consumer privacy.

Customer Choice

A fundamental principle for NCAC in the area of consumer protection is that all customers get retail access on the same timeframe. SB390 allows large customers to get access four to six years before small residential and commercial customers. The Comprehensive Review recognized the risks to captive customers if one customer class gets access before another. NCAC recommends that all customer classes should have access at the same time - no special treatment for large customers. Also, a deliberate statement was made by the Review which links the initiation of customer choice with the funding for the USBP. NCAC supports this linkage.

Transition Costs

The definition of transition costs includes both net verifiable generation and supply costs that become unrecoverable due to customer choice as well as "existing generation investments and supply commitments or other obligations." [section 3(22)] The second part of this definition seems to imply that all public utility costs, whether they are above market or not, should be included as a transition cost. NCAC does not support this definition of transition costs. In

addition, the categories of transition costs is open-ended and allows public utilities to include "other transition costs as may qualify for recovery under this section." [section 12(1)(d)] This catch-all category should be eliminated from the bill such that customers know what utility investments are considered as transition costs.

SB390 states [section 12(2)(a)] that "transition costs must reflect all reasonable mitigation..." If a utility can claim that it has done all that is "reasonable" to mitigate stranded costs, then there is little incentive to control these costs if recovery is guaranteed. NCAC recommends that transition costs must reflect all "feasible" mitigation. In addition, the legislature should require the PSC to consider an equitable sharing of transition costs between public utility shareholders and their customers for investments in uneconomic power plants.

Thank you for the opportunity to provide our comments and recommendations to the Committee. NCAC has a more detailed list of recommended changes for specific subsections that we will provide to the Committee under separate cover. In order for NCAC to support SB390 we urge you to incorporate the above recommendations into an amended bill.

4/7/97

SB 390 - 3d Reading Copy
Amendments Requested by NRDC

1. Page 2, § 2(4)(d)(iii), Legislative Findings and Policy: Revise subparagraph as follows:

"(iii) new renewable resource projects and applications;"

Rationale: Underlined language is proposed to make clear the statute's intent to comply with the Comprehensive Review's recommendations for funding new, as opposed to existing, renewable resource projects, as well as applications.

2. Page 6, § 3(28)(c), Definitions: Revise paragraph as follows:

"(c) new renewable resource projects and applications, including . . ."

Rationale: Underlined language is proposed to make clear the statute's intent to comply with the Comprehensive Review's recommendations for funding new, as opposed to existing, renewable resource projects, as well as applications.

3. Page 18, § 22(1), USBP: Revise paragraph as follows:

"(1) Universal system benefits programs are established for the state of Montana to ensure continued funding of energy conservation, new resource projects and applications, and low-income energy bill assistance . . ."

Rationale: Underlined language is proposed to make clear the statute's intent to comply with the Comprehensive Review's recommendations for funding new, as opposed to existing, renewable resource projects, as well as applications.

4. Page 19, § 22(7)(a), USBP: Revise paragraph by adding new subparagraph as follows:

. . .: but

(iii) if the funding of universal system benefits programs increases pursuant to subsection (2)(a) or (2)(b), then the product of 1.1 mills per kilowatt hour must be multiplied by the customer's kilowatt hour purchases, less customer credits provided for in this subsection (7), as the sole method to determine the customer's funding charge; . . .

Rationale: This amendment is necessary to ensure that large customers pay their proportional share of USBPs if funding levels increase to 3.18% of annual retail revenues. At this higher funding level, a \$500,000 cap is not appropriate, because it appears that neither ASMI nor Stone Container would pay their proportional share of USBP requirements, which would be greater than \$500,000 for each of these customers. PREFERABLY, HOWEVER, THE ENTIRE PARAGRAPH (a) OF SUBSECTION (7) SHOULD BE DELETED, INCLUDING NRDC'S PROPOSED AMENDMENT. NRDC DOES NOT SUPPORT LEGISLATIVELY SPECIFYING CAPS ON LARGE CUSTOMER PUBLIC-PURPOSE CONTRIBUTIONS.



MONTANA ENVIRONMENTAL INFORMATION CENTER

April 7, 1997

Mr. Chairman, and members of the committee. My name is Patrick Judge, speaking on behalf of Montana Environmental Information Center. MEIC is a member of the Northwest Conservation Act Coalition (NCAC), and concurs with their testimony. MEIC is strongly opposed to Senate Bill 390, on both environmental and consumer grounds. Our objections are numerous, but I will focus on three points: the transition timeline, the allocation of transition costs, and the universal system benefits program. But first, let me make it clear that MEIC does not accept the premise that deregulation of the electric utility industry will prove beneficial to ordinary Montanans, or to the environment. This bill in particular concentrates the benefits of restructuring with large industry and with the power companies, and has very little to offer ordinary consumers.

I. TRANSITION TIMELINE - Section 5, Page 7

Very early in this bill, a distinction is made between small and big customers. Big customers, those using one or more megawatts of power, get off the system a full four years prior to all other public utility customers. This means that the large customers can shop around and pick up the good deals, long before the rest of us even get into the store. Montana's homeowners and main street businesses will have a difficult time competing with the attractive industrial loads anyway. When, or if, approached by utilities, the product will certainly be more costly than it is for industry. Letting big customers choose first simply aggravates this problem of cost shifting.

If meaningful competition does not develop for small customers, the bill allows for an extension, but only until 2004. The language in lines 9-10 is

SB 390, 3d Reading Copy
NRDC Proposed Amendments
Page 2

5. Pages 11 and 12, § 12(3)(b), Transition Charges: Strike entire paragraph (b) of subsection 12(3), and renumber existing paragraphs:

(b) ~~A transition charge may not be collected from CUSTOMERS FOR:~~

~~(i) customers with new OR ADDITIONAL loads of 1,000 kilowatts or greater that were connected to either the public utility's transmission or distribution facilities FIRST SERVED BY THE PUBLIC UTILITY after December 31, 1996; or~~

~~(ii) customers generating electricity for their own use LOADS SERVED BY THAT CUSTOMER'S OWN GENERATION.~~

Rationale: This paragraph does not change the amount of a utility's transition- (or stranded-) cost recovery. Rather, it dictates that certain groups of large customers will not be required to pay such costs. To exempt new or additional loads of 1 MW or greater and all self-generator loads from transition-cost recovery inappropriately would shift stranded cost recovery from intensive users of electricity to smaller users. Such cost-shifting measures would result in a rate structure akin to declining block rates, under which the more you use, the less you pay. In other words, the paragraph would reward large users of electricity for consuming more energy by allowing them to pay lower rates on new, additional, or self-generated loads. The PSC rejected declining block rates long ago as grossly inequitable and as a strong disincentive to efficient energy use; the legislature should not re-authorize them in this bill.

exceedingly optimistic. Unfortunately, the legislature can't direct markets to develop. If they don't, these customers will face all of the abuses of monopoly, without the protection of the PSC.

II. ALLOCATION OF TRANSITION COSTS - Section 12, Page 10 - 14

While the Public Service Commission will have the authority to determine transition costs, they do not have the authority to allocate these costs in an equitable fashion. Some of these costs were either forced upon the company, or were incurred in the public's best interest. Others, such as Colstrip, Rosebud, and Corette were not. Montana Power Company shareholders should pay their fare share of these costs. On page 13, customers are assured that the only costs that can be recovered at a level higher than existing rates are public purpose programs, some tax impacts, extraordinary events, and transition costs such as metering. These meters run in the range of \$300 - \$400, a serious "cost" for a family not even sure that they want choice.

III. UNIVERSAL SYSTEM BENEFITS PROGRAM - Section 22, Pages 18-20

MEIC strenuously objects to the absence of adequate funding for energy conservation, renewable energy sources, and low-income assistance. The level of funding agreed upon in the Comprehensive Review of the Northwest Energy System was 3%, plus additional money for low-income bill assistance - not 2.4% inclusive of bill assistance. But just as important are the exemptions, qualifications, and other loopholes found in this section. On page 19, lines 22-24, you find the creation of a sliding scale so that "an individual customer may not bear a disproportionate share." Considering the excruciating level of detail contained elsewhere in the bill, the ambiguity of this clause is puzzling, and frightening. In the next subsection (7), big customers again walk away with special deals. In no case may a large customer pay more than \$500,000 or 0.9 mills / kwh, whichever is lower. This "millage" figure is very low. According to the March 1997 edition of

the National Conference of State Legislators magazine, funding levels for similar programs in Massachusetts, Rhode Island, and California range from 0.2 to 0.4 cents per kwh. Remember that a mill is a tenth of a cent, so in Montana big customers would pay 0.09 cents / kwh. If your operation uses an average of 2,000 kilowatts for a year, you will consume 17.5 million kilowatt-hours of energy. Using this formula, you owe about \$16,000. Say your neighborhood hospital uses only 1000 kilowatts, that's 4.4 million kilowatt-hours. Assuming, that our program translates only into 0.2 cents / kwh like in Rhode Island, they still pay \$18,000. That's more than the customer with twice the load! Only those customers using in excess of 63,000 kilowatts would actually pay the \$500,000.

On line 30, page 19, and lines 1-6, large customers get to credit their internal expenditures on conservation toward their funding requirement. Why can't a homeowner in Cut Bank buy a compact fluorescent bulb and credit it against his requirement? Continuing on, in lines 7-11, you find that a company could make a one-time retrofitting investment and conceivably opt out of this charge for a decade or more!

In lines 12-13, this inadequate and watered down program could be further tampered with or thrown out altogether if a utility is competitively advantaged or disadvantaged. This provision, as well as that found on page 26, lines 26-29, is the "lowest common denominator" approach to public purposes. Proponents claim this bill is about Montana taking charge of its own electric future - why can't we set our own charge without tying it to states?

MEIC does not believe that there are compelling reasons to move forward with deregulation at this time, and certainly not in the form offered by this bill. The threat of large customers leaving the system (which they could only do if they remade themselves as wholesalers or self-generators - not trivial conversions) can be dealt with in the form of a study bill, with exit fees.

**NFIB**National Federation of
Independent BusinessEXHIBIT 21
DATE 4/7/97
SB 390

NFIB SPECIAL POLL RESULTS

Electricity Deregulation

A recent poll of NFIB members found that small business owners do not have overwhelmingly strong views on the impact deregulating the generation of electricity will have on their small business. The poll results clearly indicate a lack of awareness of the issues.

However, most polled give deregulation of electricity generation the benefit of the doubt because small business owners generally favor full and open competition in the marketplace.

Given this, there are several issues that are very important to small business.

- ◆ Most, if not all small businesses polled want to ensure reliable service in a deregulated market.
- ◆ Lower Rates: Cost intensity varies with usage.
- ◆ Small business owners strongly believe that all classes of customers should experience competition at the same time: No customer class should receive preferential treatment in receiving the benefits of competition.
- ◆ Small business owners want to ensure that they are fairly represented when states make implementation decisions about deregulation. Small business would argue for involvement by the state legislature or an effective small business advocate at the public utility commission.
- ◆ Small business rates should not subsidize the rates of other payers.
- ◆ Investor-owned utility stockholders should bear some responsibility for stranded costs.
 - * Small business owners are one of the most regulated segments in America. Whether its federal, state or local mandates and regulations, small businesses have to deal with government dictates everyday while not being guaranteed a profit or re-imbursement of government related costs.

While these poll results reflect general feelings and attitudes toward some utility restructuring issues, there is no clear direction on the timing of deregulation.

Note: The results of the NFIB Special Poll on Electricity Deregulation are to test NFIB members attitudes and feelings about utility deregulation. These results are not necessarily a statement of NFIB policy. Follow-up polling is anticipated at a later date, as is mandate polling, which will set NFIB policy on the issue of electricity deregulation.

SPECIAL POLL

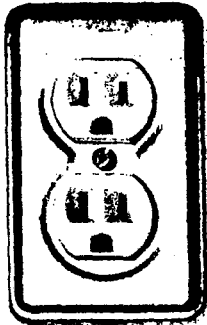
Determine NFIB's Position on the Issue



NFIB

National Federation of
Independent Business

NFIB Member Services
53 Century Blvd., Suite 300
Nashville, TN 37214



Electricity Deregulation

*Please Read And Respond To These Important
Questions About Electric Deregulation.*

The Congress will soon begin to consider legislation requiring states to loosen their regulatory control over electric power generation. Some states have already taken steps in this direction. Most other states are currently, or will soon, examine deregulation of electric utilities. The stakes for small business in these decisions are high. They include potentially lower electric rates, possible complications in billing, perhaps some lost reliability (debatable), environmental effects – some beneficial and some not – and equity considerations.

NFIB needs your opinions on the important issues related to electric utility deregulation. It is the only way we can effectively represent you and the millions of small business owners like you. Please take a few minutes of your valuable time to let us know what you think on the attached pages. Some of the issues may not be familiar to you. We have provided background information to help you better understand them. So, please let us know what you think. And please jot down any special comments you would like to add.

SPECIAL POLL

6. Who should be more responsible for paying the stranded costs of utility companies?

1. Predominantly rate payers 24.5%
2. Predominantly utility stock holders (investors) 63.9%
3. No Opinion 11.6%

6a. If rate-payers bear some portion of the stranded costs of utility companies, which type of rate-payer should be more responsible for paying them?

1. Predominantly rate-payers who leave for a new generator 52.6%
2. Predominantly rate-payers who stay with the old generator 12.8%
3. No Opinion 34.6%

7. If stranded costs were absorbed predominately by rate-payers, would you generally favor or oppose deregulation of electric power generation?

1. Favor 29.0%
2. Oppose 56.7%
3. No Opinion 14.3%

Background: State public utility commissions (PUCs) currently regulate electric utilities including the price utilities charge for electricity. In a deregulated climate, the PUCs would no longer regulate the price of electricity generated. The market would set that price. However, the PUCs would continue to regulate the price for "renting" the wires, i.e., electric grid. The PUCs would also have a critical

role in the transition from a regulated to a deregulated climate.

8. Should all public utility commissions (PUC's) or public service commissions (PSC's) be required to have a small business advocate, i.e., person(s) on staff to represent the interests of small business.

1. Yes 86.0%
2. No 8.9%
3. No Opinion 5.1%

9. What was your electricity bill last month?

\$_____,000
 \$100-\$200 - 39.7%
 \$200-\$400 - 24.7%
 \$400-\$750 - 24.6%
 Over \$750 - 10.8%

Comments or Suggestions:

Fold here.

Place
Stamp
Here

1997 NFIB Electricity Deregulation Poll

**National Federation of
Independent Business**
 P.O. Box 305040
 Nashville TN 37230-5040

Seal With Tape

SPECIAL POLL

How Important:

g. Rates held down for low income customers

1. Very 21.8% 2. Somewhat 49.5%
3. Not Very 18.1% 4. Not at All 10.7%

h. Getting complete service (generation, transmission, distribution) – all from only one company

1. Very 29.3% 2. Somewhat 31.5%
3. Not Very 23.4% 4. Not at All 15.8%

i. Minimizing the environmental impact of electric generation

1. Very 30.6% 2. Somewhat 47.7%
3. Not Very 19.4% 4. Not at All 2.3%

j. Uncompromised safety

1. Very 67.3% 2. Somewhat 32.6%
3. Not Very 4.1% 4. Not at All 0%

k. Small business rates do not subsidize the rates of other payers

1. Very 82.3% 2. Somewhat 14.4%
3. Not Very 1% 4. Not at All 0%

l. Utility competition with retail and service businesses

1. Very 34.9% 2. Somewhat 43.4%
3. Not Very 14.2% 4. Not at All 7.5%

m. People in rural areas will have a choice in power suppliers.

1. Very 25.6% 2. Somewhat 37.2%
3. Not Very 22.9% 4. Not at All 14.3%

3. Which item would you say is the single most important to your business? (Circle One Only)

1. Low rates 35.3%
2. Ability to choose power supplier 5%
3. Rates don't change very much or very often 14.5%

4. Rate changes are predictable in amount and timing 14.5%

5. Service is reliability 28.1%

6. Utilities develop programs to improve energy efficiency 5%

7. Rates held down for low income customers 5%

8. Getting complete service (generation, transmission and distribution) – all from only one company. 2.5%

9. Minimizing environmental impact of electricity generation 2.7%

10. Uncompromised safety 5%

11. Small business rates do not subsidize the rates of other payers. 4%

12. Utility competition with retail & service businesses 2.3%

13. Choice of power suppliers in rural areas .9%

Background: As deregulation began, some generating capacity would be very efficient (producing cheap electricity) and some would be very inefficient (producing expensive electricity). Not everyone would be able to purchase the cheap electricity initially. The issue is, who gets first chance to purchase the cheap electricity?

There are three classes of user – residential, commercial (virtually all small businesses located outside the home, including most small manufacturers) and industrial.

4. If deregulation occurs, should all classes of rate payers in principle experience competition at the same time?

1. Yes 66.5%
2. No 16.7%
3. No Opinion 16.7%

5. If deregulation occurs, should the industrial class (large users) be allowed to experience the competitive market first in exchange for a rate freeze for commercial and residential classes?

1. Yes 17.8%
2. No 60.3%
3. No Opinion 21.9%

5a. If deregulation occurs, should the commercial and residential classes (small users) be allowed to experience the competitive market first in exchange for a rate freeze for the industrial class?

1. Yes 28.2%
2. No 48.6%
3. No Opinion 23.2%

*Background: Existing power plants were built under a regulatory requirement to provide uninterrupted service to all customers in the service area. In a deregulated climate, new and more efficient generating capacity will be added quickly. Customers will scramble to buy the cheap electricity. That means many, but not all, of today's power plants will not be competitive. Those lost investments, made to service customers who choose another generator in a deregulated climate, are called **STRANDED COSTS**. This issue is, who pays those costs? It can either be the share-holder (investors) in those utilities with stranded costs **OR** the rate-payers through a fee on their electric bills. Among the rate-payers, stranded costs can be paid by those leaving the old utility for a new generator **OR** those remaining and purchasing their electricity from the old utility.*

Why Electricity Deregulation Matters to Small Business

There are three basic steps involved in providing electricity to end users. The first is generation – manufacturing or producing the electricity. The second is transmission – the grid system that carries electricity to the local utility. The third step is distribution – the local utility breaking it down and sending it to business and residential customers.

Recent advances in technology have shown that competition can exist in the generation of electricity. However, experts believe that the transmission and distribution steps (the lines or wires) can only exist as monopolies.

Electric utilities can now shop among power generators, but there

are economic reasons for them to use the electricity they generate. These utilities, then, send the electricity over the wires to their customers. The fundamental idea behind electric utility deregulation is to allow you, the customer, shop among competing companies for the lowest priced electricity available. The generator (perhaps your local utility) would send electricity to you over the shared system of wires, called the electric grid.

The major advantage of deregulation is to lower the cost of electricity in the *long-term*. However, there is no certainty about what would happen to rates in the *short-term*. Lower generating costs could encourage

more efficient generation and new investment in the industry. However, all consumers will *not* share equally in the price reductions – at least not initially. And, in a deregulated climate, many would deal with a generation company *and* a transmission/distribution company. There are also environmental effects – some may be positive, some may be negative – depending on the relative cost of various fuels among other things.

At least two major transition issues arise for small business in moving from a regulated to a deregulated climate. The first is paying for “stranded-costs,” historic investment. The second is “who goes first?” into the deregulation climate.

1. Do you generally favor or oppose deregulation of electric power generation? (Circle One)

1. Favor 42.9%
2. Oppose 48.0%
3. No Opinion 9.2%

2. Please look at the following list of factors that may be important to you regarding your electric service. Please circle the level of importance of EACH factor to your business.

Factor Level Of Importance
(Answer All A-M)

How Important:

a. Low electricity rates

1. Very 41.3% 2. Somewhat 36.9%
3. Not Very 18.8% 4. Not at All 0%

b. Ability to choose your power supplier

1. Very 21.6% 2. Somewhat 36.9%
3. Not Very 22.5% 4. Not at All 18.9%

c. Electricity rates do not change very often or very much

1. Very 35.0% 2. Somewhat 45.3%
3. Not Very 17.9% 4. Not at All 1.8%

How Important:

d. Electricity rate changes are predictable in amount and timing

1. Very 34.1% 2. Somewhat 46.4%
3. Not Very 14.1% 4. Not at All 5.5%

e. Service is reliable

1. Very 89.6% 2. Somewhat 10.4%
3. Not Very 0% 4. Not at All 0%

f. Utilities develop programs to improve energy efficiency

1. Very 50.5% 2. Somewhat 44.1%
3. Not Very 4.5% 4. Not at All 0%

Electric Utility Restructuring and Provisions for Customer Choice
Cooperative Utility Perspective
Montana Electric Cooperatives' Association

Mr Chairman, members of the committee, my name is Tim Gregori, General Manager of Big Horn County Electric Cooperative and I am here today to comment on Senate Bill 390. Specifically, I will be sharing the Cooperative utility perspective on how Senate Bill 390, in its present form, will affect rural Montanans served by Rural Electric Cooperatives.

In the interest of time I will comment briefly on the following:

1. Transition Plans for Electric Cooperatives.
2. Stranded, or Competitive Transition Costs for Cooperatives.
3. Distribution Facility and Services Obligations.
4. The Cooperative Utility Exemption.
5. Universal Systems Benefits Programs.
6. Territorial Integrity.

Transition Plans For Electric Cooperatives:

Section 13 of SB 390 establishes the requirements of a Transition Plan for Cooperative Utilities whose member/owners determine participation in a restructured utility environment is in their best interest. As with all major decisions affecting a Cooperative utility, our consumer/owners will make the final determination as to what will, or will not, benefit them and their neighbors if restructuring becomes reality.

In those instances, where the member/owners of a Cooperative Utility foresees measurable benefits that would support a decision to participate in restructuring, they may direct their Cooperative to proceed with the development of a pilot project for a select number of their consumers. This pilot project will be a test of their "Transition Plan" that will enable customer choice. These transition plans will be similar to those developed by public utilities and certified by the Montana Public Service Commission.

A key element of a Cooperative's Transition Plan will be the requirement to educate the customers they serve about the details of restructuring. Education will be an essential component of an informed assessment of the impact of a decision to select an alternate energy commodity provider.

Stranded or Competitive Transition Costs for Cooperatives

Stranded or Competitive Transition Costs are investments utilities made under current operating conditions that may become uneconomic in a restructured competitive electric utility market environment. Stranded investments refer to wholesale power purchase contracts with utility and non utility generators, regulatory assets, Public Utility generating assets, and costs associated with the renegotiation or buy out of existing generation or wholesale power related contracts.

The lack of generation facilities does not immunize an electric Cooperative from experiencing stranded or transition costs in the advent of a restructured utility environment. Non generating utilities, such as Cooperatives, rely on long term wholesale power contracts to guarantee a reliable source of electric energy. To ensure a firm supply of energy Cooperatives negotiated long term all requirements contracts that "bound" them to a supplier of energy. These contracts not only require a Cooperative to purchase their electric energy from a particular supplier for a prescribed period of time - they prohibit the purchase of wholesale power from any other source.

If the utility industry were to restructure and Cooperative utilities were not allowed to recover these above market costs they would be placed in a very difficult position. Unlike the customers they serve Cooperatives would be contractually precluded from "shopping the market" and securing lower market priced electric energy. As a result, they would be placed at an unfair disadvantage if the market rates for electricity fell below the amount they must charge for their electric energy services as dictated by their all requirements contracts and fixed operating costs.

For Cooperatives stranded investment or transition costs would be a function of their losses resulting from a decline in sales. As the customers they serve exercise "choice" and purchase their energy requirements from a different source the Cooperative would merely become a facility provider or "wires only" utility for those consumers. The transition to a "Wires only Cooperative" may be what happens in certain instances. However, those customers that are precluded from exercising choice should not unfairly be burdened with the residual costs of the "all requirements contracts" from which departing customers once benefited.

Distribution Facility and Services Obligations

Rural Electric Cooperatives are the embodiment of a customer driven low cost provider of electric energy and services. Our customers are the reason we exist and it must be in their best interest that we act. Without Rural Electric Cooperatives small communities from Eureka to Ekalaka, and from Wisdom to Wibaux may still be without central electric station service.

Cooperatives were created to provide service to these areas when it was apparent that a "reasonable rate of return" would never be realized. Rural Electric Cooperatives were the original "provider of last resort" and will most likely continue that role for many years to come. It cannot be over emphasized that restructuring will impact only the electric commodity dimension of this industry. The facilities required to deliver electric energy - the wires, poles, transformers and etc. - will remain and the costs of providing facilities will continue to be borne by the consumers who use of those systems in the receipt of their energy requirements - regardless of who provides their electric services.

The Cooperative Utility Exemption

Restructuring an industry as complex as the Electric Utility Industry will require extensive examination of "detail" before it can be assumed that "All Montana will benefit from an efficient, competitive electricity market". Rural Electric Cooperatives are strong advocates of bringing reduced rates and quality service to all Montana Electric Customers. However, compulsory restructuring must be founded on fact and understanding, and not merely intuitive inclinations that benefits will be an "automatic" result of a restructured utility marketplace.

The measurable benefits of electric utility industry restructuring remain unclear. Several states have implemented varying forms of "customer choice" - with mixed results. None the less, it appears there is a potential for electric customer "savings" in the receipt of electric energy services in a "restructured and competitive" market place. Recognizing the complexity of restructuring, there is clearly a need to offer Cooperatives serving in areas where restructuring does not make sense, the choice to delay participation until the consumers they serve wish to participate.

The net savings a customer will realize, in a restructured electric utility environment, is the difference between energy commodity rates derived using current rate determinants and rates for electric energy determined by market forces. If the customer exercising "choice" is responsible for transition costs that exceed savings realized by purchasing electric energy from alternate suppliers there would be limited justification for a restructured market. Forcing rural Montana electric customers to pay higher rates to justify customer choice would be contrary to the fundamental objective of restructuring. Cooperative utilities are owned and directed by the consumers we serve. The Cooperative option to delay participation is supported by a common sense premise - "who could be better positioned than our consumers/owners to determine if customer choice is in their best interest".

Cooperative utilities are owned and directed by the consumers we serve. The Cooperative option to delay participation is supported by a common sense premise - "who could be better positioned than our consumers/owners to determine if customer choice is in their best interest".

Universal System Benefits Programs:

There are a number of social programs funded through the rates you pay for electric energy. The programs have widespread support and the special interest groups promoting these causes feel very strongly that funding should not be jeopardized by a restructured utility industry. Montana Electric Cooperatives have a long tradition of supporting cost effective conservation programs, renewable resource enhancement, and research and development of

efficient electric facility systems. Electric Cooperatives have also made a conscious effort to ensure that all the consumers we serve are provided electric service even when they experience hard times. Electric Cooperatives are proud of our record and believe the bill will provide the framework for us to continue our role as "good stewards" and serve as effective contributors to the strength of the rural communities we serve.

Territorial Integrity:

An important component of the legislation for many Montana Cooperatives will be the modification of the Territorial Integrity Act. For over twenty-five years the existing statute has permitted Montana rate payers to be billed the cost for wasteful construction duplicate electric distribution facilities in the wake of municipal annexation. Under present law, once an area is annexed by a municipal government with a population in excess of 3500, a Cooperative is prohibited from serving any new consumers - even if they build their new home right next to our lines.

Without corrective measures granting Cooperative utilities the right to serve areas post annexation, a transition to a restructured electric utility industry in Montana would be seriously flawed. As mentioned earlier, restructuring is about "choice" as to who will provide the commodity electric energy, and not about constructing duplicate electric distribution facilities whose cost would greatly out weigh any savings in the cost of energy.

Closing Remarks:

Mr. Chairman, members of the Committee, the impact of a restructured electric utility environment on rural Montana and the customers we serve will be as varied as the landscape of this great state that we are so blessed to call home. In its present form, the bill offers a well balanced opportunity to exercise choice where appropriate, and protection from another penalty for living and working in rural Montana. Rural Electric Cooperatives are the embodiment of a customer driven low cost provider of electric energy and services. The customers we serve are the reason we exist and it must be in their best interest that we act. Rural Electric Cooperatives want to ensure that benefits of retail electric customer choice will be shared by all Montanans regardless of where they live, or the amount of electric energy they purchase.

HOUSE OF REPRESENTATIVES
55TH LEGISLATIVE SESSION - 1997

ROLL CALL
APPROPRIATIONS COMMITTEE

DATE 4/7/97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Tom Zook, Chairman	✓		
Rep. Ed Grady, Vice Chairman, Majority	✓		
Rep. Joe Quilici, Vice Chairman, Minority	✓		
Rep. Beverly Barnhart	✓		
Rep. Ernest Bergsagel	✓		
Rep. John Cobb	✓		
Rep. Roger DeBruycker	✓		
Rep. Gary Feland	✓		
Rep. Don Holland	✓		
Rep. John Johnson	✓		
Rep. Royal Johnson	✓		
Rep. Betty Lou Kasten	✓		
Rep. Bob Keenan	✓		
Rep. Matt McCann	✓		
Rep. Red Menahan	✓		
Rep. Ray Peck	✓		
Rep. Steve Vick	✓		
Rep. Bill Wiseman	✓		

APPROPRIATIONS COMMITTEE HOUSE OF REPRESENTATIVES

DATE 4/7/97 BILL NOS. SB 390,
HB 549, HB 614

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NAME	ADDRESS	BILL NO.	PROPO-NENT	OPPO-NENT
Allen Thiessen	Lambert, mt	549/614		✓
Bryan Elliott	Box 570 Superior, MT. 59417	✓		✓
Terry Hotzer	Yellowstone Valley Elec. Co.	549/614		✓
Lee Holden	Cut Bank MT	549/614		✓
Jim Eskridge	Fairfield mt.	549/614		✓
Steve J. Wickens	2611 10th Ave S. Great Falls 42-155	549/614		
Bill Chapman	410 E Main Cut Bank MT 59427	549/614		✓
Warren McCorkrey	6795 MT 35 Bigfork, MT	549/614		✓
Chuck Evilsizer	2709 Gold Rush Helena, MT	614	✓	
Donald Quance	492 Tabriz Drive	614		✓
Nancy McCaffree	PSC-1701 Rospect	614	✓	
Judy Wiens	Mt. Elec. Co-op Ass'n	549/614		XX
Michael F. Tate	Sidney, MT	549/614		✓
Angela Thiessen	Sidney MT	549/614		✓
Dave Wheelihan	Mt. Elec Co-op Ass'n	614/549		✓
James Bellessa	D.A. Davidson Great Falls	390	✓	
Ed BARTLETT	MONTANA POWER CO.	614		X
TARA MOLE	Nolana, MONTANA	549/614		X
Ann Kutzweiler	Clancy, MT	390		✓
Sheena Wilson	1001 Harrison Helena	614	X	
Gerald E. Chittick	Northern Light S Co	614		✓

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APPROPRIATIONS COMMITTEE HOUSE OF REPRESENTATIVES

DATE April 7, 1997 BILL NOS. SB 390
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NAME	ADDRESS	BILL NO.	PROPO- NENT	OPPO- NENT
Ron Ostberg	Fairfield, WY.	SB 390	✓	
Donald Guander	Billings, MT	SB 390	✓	
Deborah Smith	MT (Chapter 24 Club)	"		X
Peter West	Renewable Northwest	SB 390		✓
Nancy Hirsch	Northwest Conservation Act Coalition	SB 390		X
Chuck Evilsizer	Ronan Tel. & Hot Springs Tel	SB 390		X
Verner Rosten	Montana Senior C. 2525	SB 390		X
Dave Wheelihan	Montana Electric Co-op Ass'n	SB 390	✓	
Bob Anderson	PSC	"		✓
Perry Cole	40 East Broadway Int. Power Co. of Me	SB 390	X	
Brother Bastian	1820 Winder - Helena	SB 390		X
Darryl Wiggins	MT Electric Co-op Ass'n	SB 390	X	
Ronald Mueller	11th Creek Crossing, Missoula	SB 390		X
Nick Patterson	MT SENIOR CITIZENS	SB 390		X
Rep Bill Ryan	Over Falls		X	
John Alke	MDU	SB 390	X	
Larry Zashenke	Missoula Elec Co-op	SB-390	X	
Robert P. Walker	Missoula Electric Co-op	SB-390	X	
John Lundgren	Helena, MT	HB 614		X
Gwen Bantz	Box 507 Butte	SB 390	X	
RILEY Johnson	NFIB - Helena	SB 390	<u>Tagger</u>	

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APPROPRIATIONS COMMITTEE HOUSE OF REPRESENTATIVES

DATE April 7, 1997 BILL NOS. SB390

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NAME	ADDRESS	BILL NO.	PROPO- NENT	OPPO- NENT
Patrick Judge	MEIC	SB390		X
ELLEN ENGSTEDT	HRAC	SB390	✓	
BETTY WADDELL	MT ASSOC. OF CHURCHES ^{311 POWER}	SB390		X
Lanny Olberg	PSC	SB390	✓	
Debra Bicare	MT People's Action	SB390		X
David Olsen	mt chamber	390	✓	
Ted Lange	NPRC	390		X
Donna Burr	mt taxpayers	390	✓	
KATHARINE BROWN	626 MADISON	390		✓
Don Allsup	MT. Local Products Assoc	390	✓	
Dexter Rusty	MT. Refine CO.	390	✓	
David Dittloff	mt chamber	390		✓
Mike Strand	mt Independent Telecommunications Systems	390	✓	
George Paul	Farmer's Union	390		✓
Angela Whisenand	Sidney, MT	390	✓	
Brad Griffin	MT Retail Assoc.	390		X

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APPROPRIATIONS COMMITTEE

WITNESS STATEMENT

P L E A S E P R I N T

NAME Donald W. Quander

ADDRESS 492 TABRIZ DRIVE

YOU REPRESENT Stone Container Corp

PROPONENT ✓ OPPONENT

COMMENTS SB 390

APPROPRIATIONS COMMITTEE

WITNESS STATEMENT

P L E A S E P R I N T

NAME Nancy Hirsh

ADDRESS 217 Pine St. Suite 1020 Seattle, WA 98101

YOU REPRESENT Northwest Conservation Act Coalition

PROPONENT _____ OPPONENT _____ Information X

COMMENTS _____

- ① If a Co-operative utility opts out of customer choice they should still be required to contribute to the universal benefits charge.
- ② The universal benefits charge should be set at 3% of retail sales plus an additional amount for low income energy assistance.
The bill sets a date certain for customer choice and should establish a set amount for the universal benefits charge
- ③ Explicitly charge the PSC to do an assessment of consumer protection needs when moving to a customer choice environment.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON APPROPRIATIONS

Call to Order: By CHAIRMAN TOM ZOOK, on April 11, 1997, at 3:00 p.m., in Room 312-2.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Edward J. "Ed" Grady, Vice Chairman (Majority) (R)
Rep. Joe Quilici, Vice Chairman (Minority) (D)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. John Cobb (R)
Rep. Roger DeBruycker (R)
Rep. Gary Feland (R)
Rep. Don Holland (R)
Rep. John Johnson (D)
Rep. Royal C. Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Bob Keenan (R)
Rep. Matt McCann (D)
Rep. William T. "Red" Menahan (D)
Rep. Ray Peck (D)
Rep. Steve Vick (R)
Rep. William R. Wiseman (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Environmental Quality Council
Marjorie Peterson, Committee Secretary

Committee Business Summary:

Hearing: None.

Executive Action: SB 390 BE CONCURRED IN AS
AMENDED, HJR 32 DO PASS
HB 614 TABLED

EXECUTIVE ACTION ON SB 390

Motion: REP. KASTEN moved SB 390 Be Concurred In As Amended.

The subcommittee on SB 390 had adopted 51 amendments to the bill. There had been 261 amendments offered. REP. KASTEN submitted the Pay Bill on SB 390, dated April 11, 1997. EXHIBIT 1.

Tape: 1; Side: A; Approx. Tape Counter: 0.1.}

Discussion:

{Tape: 1; Side: A; Approx. Tape Counter: 0.8.}

Motion/Vote: REP. COBB moved amendment SB039061.ate Be Concurred In. Motion failed 4 - 14, with REPS. COBB, MENAHAN, BARNHART, and PECK voting yes.

{Tape: 1; Side: A; Approx. Tape Counter: 1.4.}

Motion/Vote: REP. COBB moved amendment SB039062.ate Be Concurred In. Motion failed 5 - 13, with REPS. COBB, BARNHART, PECK, VICK, and MCCANN voting yes.

{Tape: 1; Side: A; Approx. Tape Counter: 6.0.}

Motion/Vote: REP. COBB moved amendment SB039063.ate Be Concurred In. Motion failed 4 - 14, with REPS. COBB, BARNHART, PECK, and MCCANN voting yes.

{Tape: 1; Side: A; Approx. Tape Counter: 9.5.}

Discussion:

Todd Everts, EQC, explained the amendments SB039060.ate that were adopted by the subcommittee. Mr. Everts submitted a copy of the Transition Advisory Committee expenses. EXHIBIT 2.

{Tape: 1; Side: A; Approx. Tape Counter: 14.6.}

Questions From the Committee:

{Tape: 1; Side: A; Approx. Tape Counter: 26.0.}

Motion/Vote: REP. KASTEN moved SB 390 Be Concurred In As Amended. Motion carried 15 - 3 on a roll call vote, with REPS. BARNHART, COBB, and PECK voting no.

{Tape: 1; Side: B; Approx. Tape Counter: 14.3.}

EXECUTIVE ACTION ON HJR 32

Motion/Vote: REP. PECK moved HJR 32 Do Pass. Motion carried 17 - 1, with REP. VICK voting no.

{Tape: 1; Side: B; Approx. Tape Counter: 16.8.}

EXECUTIVE ACTION ON HB 614

Motion/Vote: REP. KASTEN moved HB 614 Be Tabled. Motion carried unanimously.

{Tape: 1; Side: B; Approx. Tape Counter: 19.0.}

GREY BILL

April 11, 1997

SB0390.03
EXHIBIT 1
DATE 4/11/97
SB 390

AMENDMENTS INCLUDE IN THIS BILL: sb039060ate

Senate Bill No. 390

Introduced By thomas, quilici, harp, bergsagel, sliter, molnar,
beaudry, masolo, grinde, mahlum, menahan, devlin, shea,
christiaens, simpkins, stang, depratu, l. taylor, harrington,
bookout-reinicke, story, ohs, pavlovich, devaney, jabs, rehbein,
keating, toews, tropila, orr, foster, lynch, galvin, mccarthy,
beck, ryan, emerson, kitzenberg, debruycker, hertel, mills,
grady, halligan, m. taylor, grosfield, wilson, nelson, clark,
tash, bishop, benedict, sprague, cole, mohl, ellis, jenkins,
kottel, wyatt, denny

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY ESTABLISHING
RESTRUCTURING REQUIREMENTS FOR MONTANA'S ELECTRIC UTILITY
INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING THE
TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC
COOPERATIVE PROPERTIES FROM CLASS SEVEN PROPERTY; INCLUDING
CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES IN CLASS NINE
PROPERTY; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE
① TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY
RESTRUCTURING; IMPOSING A FEE ON ELECTRIC UTILITY COMPANIES TO
SUPPORT THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE;
AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102,

COMMITTEE: SB 390 Transition Advisory Committee (electric utilities)

Number of Meetings	10	10		
Avg. days/meeting	1	2		
LEGISLATOR EXPENSES		COMMITTEE OPERATING EXPENSES: Interim		
No. of Reps	5	5	Contract Services	\$37,500
Meals	\$601	\$1,203	Final Report	\$1,313
Lodging	\$663	\$1,326	Other Printing	126
Mileage	\$4,249	\$4,249	Photocopies	\$1,054
Subtotal	<u>\$5,513</u>	<u>\$6,778</u>	Supplies	\$20
Salary	\$2,270	\$4,539	Postage	\$968
Benefits	\$195	\$390	Subtotal	<u>\$40,981</u>
Subtotal	<u>\$2,465</u>	<u>\$4,929</u>		
No. of Senators	4	4		
Meals	\$481	\$962	COMMITTEE TOTAL	\$76,525
Lodging	\$530	\$1,061		
Mileage	\$3,455	\$3,455		
Subtotal	<u>\$4,466</u>	<u>\$5,478</u>		
Salary	\$1,816	\$3,631		
Benefits	\$156	\$312		
Subtotal	<u>\$1,972</u>	<u>\$3,943</u>		
CONSTANTS				
Breakfast	\$3.50	\$5.00	Cost per copy	\$0.035
Lunch	\$4.00	\$6.50	#pages/Final Report	150
Dinner	\$8.00	\$12.00	#copies/Final Report	250
Lodging	\$30.00	\$50.00	Months for activities	20
Lod. Tax	4.00%	6.00%	Postage for letters	\$0.32
Mileage	\$0.300	\$31.20	\$53.00 No. of interested pers.	100
Cost/copy	\$0.035	\$0.035		
Salary	\$58.496	\$58.496		
FICA	7.650%	7.650%		
Work Comp	0.840%	0.840%		
WC Tax	0.10%	0.100%		
Lodging Factor	0.425	0.425		
Salary Factor	0.776	0.776		
Contingency factor	0.000%	0		
Avg RT miles /Rep	365	0		
Avg RT miles /Sen	371	0		

SB 390 Transition Advisory Committee (electric utilities)

LOTUS:BUDGETS\98\INTRI SB390-03.WK4

11-Apr-97

01:36 PM

ASSUMPTIONS:

1. The committee will meet, on average, once each month during the biennium. There will be no salary or per diem costs for meetings held during the 56th Legislature.
2. Contracted services will cover the costs of education, training, and expert witnesses.

HOUSE OF REPRESENTATIVES
55TH LEGISLATIVE SESSION - 1997

ROLL CALL VOTE
APPROPRIATIONS COMMITTEE

DATE 4/11/97 BILL NO. SB 390

MOTION Rep. Kasten moved SB 390 Be
Concurred In As Amended. motion
carried 15-3.

NAME	AYE	NO
Rep. Ed Grady, VICE CHAIRMAN, MAJORITY	✓	
Rep. Beverly Barnhart		✓
Rep. Ernest Bergsagel	✓	
Rep. John Cobb		✓
Rep. Roger DeBruycker	✓	
Rep. Gary Feland	✓	
Rep. Don Holland	✓	
Rep. John Johnson	✓	
Rep. Royal Johnson	✓	
Rep. Betty Lou Kasten	✓	
Rep. Bob Keenan	✓	
Rep. Matt McCann	✓	
Rep. Red Menahan	✓	
Rep. Ray Peck		✓
Rep. Joe Quilici, VICE CHAIRMAN, MINORITY	✓	
Rep. Steve Vick	✓	
Rep. Bill Wiseman	✓	
Rep. Tom Zook, CHAIRMAN	✓	

HOUSE OF REPRESENTATIVES
55TH LEGISLATIVE SESSION - 1997

ROLL CALL
APPROPRIATIONS COMMITTEE

DATE 4/11/97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Tom Zook, Chairman	✓		
Rep. Ed Grady, Vice Chairman, Majority	✓		
Rep. Joe Quilici, Vice Chairman, Minority	✓		
Rep. Beverly Barnhart	✓		
Rep. Ernest Bergsagel	✓		
Rep. John Cobb	✓		
Rep. Roger DeBruycker	✓		
Rep. Gary Feland	✓		
Rep. Don Holland	✓		
Rep. John Johnson	✓		
Rep. Royal Johnson	✓		
Rep. Betty Lou Kasten	✓		
Rep. Bob Keenan	✓		
Rep. Matt McCann	✓		
Rep. Red Menahan	✓		
Rep. Ray Peck	✓		
Rep. Steve Vick	✓		
Rep. Bill Wiseman	✓		

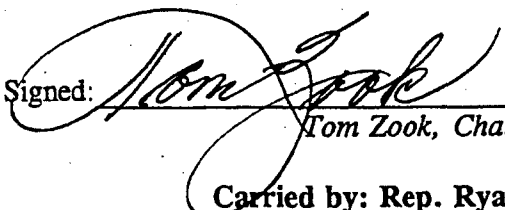


HOUSE STANDING COMMITTEE REPORT

April 11, 1997

Page 1 of 9

Mr. Speaker: We, the committee on Appropriations report that Senate Bill 390 (third reading copy -- blue) be concurred in as amended.

Signed: 

Tom Zook, Chair

And, that such amendments read:

Carried by: Rep. Ryan

1. Title, line 14.

Following: "PROPERTY;"

Insert: "APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE TRANSITION
ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY
RESTRUCTURING; IMPOSING A FEE ON ELECTRIC UTILITY COMPANIES
TO SUPPORT THE ACTIVITIES OF THE TRANSITION ADVISORY
COMMITTEE;"

2. Page 2, lines 3 and 4.

Following: "The" on line 3

Insert: "interests of Montana consumers should be protected and
the"

Strike: "WHILE" on line 3 through "CONSUMERS" on line 4

3. Page 2, line 12.

Following: "resource"

Insert: "projects and"

4. Page 2, line 15.

Strike: "bill"

5. Page 2.

Following: line 17

Insert: "(5) A utility in the state of Montana may not be
advantaged or disadvantaged in the competitive electricity
supply market, including the consideration of the existence
of universal system benefits programs and the comparable
level of funding for those programs throughout the regions

Committee Vote:

Yes 15, No 3.

771639SC.Hgd

neighboring Montana."

6. Page 3, line 3.

Following: "18;"

Insert: "or"

7. Page 3, line 4.

Strike: "; or"

Insert: "."

8. Page 3, lines 5 and 6.

Strike: subsection (c) in its entirety

9. Page 6, line 8.

Following: "resource"

Insert: "projects and"

10. Page 6, line 13.

Strike: "bill"

11. Page 11, line 17.

Strike: "and"

Insert: "or"

12. Page 13, line 19.

Following: "APPROVAL,"

Insert: "an"

Strike: "EVENTS"

Insert: "event"

13. Page 17, line 12.

Strike: "and"

14. Page 17, line 14.

Following: "requirements"

Insert: ", including any coverage amounts required by any mortgage, indenture, or other financing document;

(f) costs of refinancing and retiring debt of the cooperative utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers; and

(g) all costs, expenses, and reasonable fees related to transition bonds"

15. Page 18, line 17.

Following: the second "of"

Insert: "and new expenditures for"

16. Page 18, line 18.
Following: "resource"
Insert: "projects and"
Strike: "bill"

17. Page 18, line 30.
Strike: "BILL"

18. Page 19, line 10.
Strike: "bill"

19. Page 19, line 14.
Following: "utility's"
Insert: "minimum"
Strike: "bill"

20. Page 19, line 18.
Strike: "bill"

21. Page 19, line 20.
Strike: "BILL"

22. Page 20, lines 12 through 14.
Strike: subsection (8) in its entirety.
Renumber: subsequent subsection

23. Page 21, line 8.
Strike: "(11)"
Insert: "11"

24. Page 22, line 10.
Strike: "business"

25. Page 22, line 11.
Strike: "business"
Following: "affiliates,"
Insert: "if any,"

26. Page 24, line 25.
Strike: "18"
Insert: "eight voting"

27. Page 24, line 27.
Strike: "two"
Insert: "four"
Following: "representatives"
Insert: ", not more than two of whom may be from one political
party"

28. Page 24, line 28.

Strike: "two"

Insert: "four"

Following: "senate"

Insert: ", not more than two of whom may be from one political party"

29. Page 24.

Following: line 28

Insert: "(2) The following entities shall appoint nonvoting advisory representatives to the transition advisory committee:"

Renumber: subsequent subsections

30. Page 24, line 29.

Strike: "(c)"

Insert: "(a)"

31. Page 25, line 1.

Strike: "(d)"

Insert: "(b)"

Strike: "COUNSEL"

32. Page 25, line 2.

Strike: "(e) Two representatives"

Insert: "(c) One representative"

Strike: "are"

Insert: "is"

33. Page 25, line 4.

Strike: "(f)" through the first "the"

Insert: "(d) The"

Following: "Montana"

Strike: "are appointed"

Insert: "shall appoint one member"

34. Page 25, line 5.

Strike: "(g)" through "the"

Insert: "(e) The"

Following: "commission"

Strike: "is appointed"

Insert: "shall appoint one member"

35. Page 25, line 6

Strike: "(h)"

Insert: "(f)"

Following: "following"

Insert: "nonvoting"

36. Page 25, line 23.

Strike: "The" through "officer."

Insert: "The voting members shall select a transition advisory committee presiding officer."

37. Page 25, line 28.

Following: "senate"

Insert: ", "

Following: "commission"

Insert: "and shall provide quarterly interim summary reports to the members of the legislature through January 1, 1999"

38. Page 25, line 29.

Following: "meet"

Insert: "at least"

39. Page 26, line 21.

Strike: "bill"

40. Page 28, line 11.

Following: "to"

Insert: "nonbypassable rates and charges associated with"

41. Page 28, line 29.

Following: "The"

Insert: "total"

Strike: "revenue arising with respect to"

42. Page 29, line 3.

Strike: "obligations"

Insert: "bonds"

43. Page 29, line 4.

Strike: the first "obligations"

Insert: "bonds"

Strike: the second "obligations"

Insert: "bonds,"

44. Page 29, line 6.

Strike: "OBLIGATIONS"

Insert: "bonds"

45. Page 33, line 21.

Strike: the second "or"

Insert: "of"

46. Page 33, line 22.

Following: "that"

Insert: "the"

47. Page 34, line 2.

Strike: the first "commission"

Insert: "secretary of state"

Strike: the second "commission"

Insert: "secretary of state"

48. Page 35.

Following: line 16

Insert: "(26) The commission may, by order or rule and subject to terms and conditions that it may prescribe, exempt any security or class of securities for which an application is required under this title or any public utility or class of public utility from the provisions of this title if it finds that the application of this title to the security, class of security, public utility, or class of public utility is not required by the public interest."

49. Page 36, line 14.

Following: "."

Insert: "For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility."

50. Page 42.

Following: line 29

Insert: "NEW SECTION. Section 45. Funding for transition advisory committee. (1) There is an account in the state special revenue fund to which all fees collected under [section 46] and this section must be deposited and from which all appropriations to the legislative services division for the activities of the transition advisory committee must be paid. An appropriation to the legislative services division for the activities of the transition advisory committee may consist of a base appropriation for regular operating expenses.

(2) In addition to all other licenses, fees, and taxes imposed by law, all electric utility companies shall:

(a) within 30 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement, in a form that the commission and department of revenue may determine, showing the gross operating revenue from all activities by the commission within the state for that calendar quarter of operation or portion of a quarter, separately stating gross revenue from sales to other companies for resale; and

(b) at that time pay to the department of revenue a fee based on a percentage of the gross operating revenue reported, as determined by the department of revenue under [section 46].

(3) Unless the department of revenue requires otherwise, a statement filed pursuant to 69-1-223(2)(a) meets the requirements of subsection (2) of this section.

(4) The amount of money that may be raised by the fee on the electric utility companies during a fiscal year may not be increased, except as provided in [section 46], from the amount appropriated, including both base and contingency appropriations, by the legislature for that fiscal year. Any additional money required for operation of the transition advisory committee must be obtained from other sources in a manner authorized by the legislature.

(5) As used in [section 46] and this section, "electric utility company" has the same meaning as "electric facilities provider" as defined in 69-5-102.

NEW SECTION. Section 46. Determination of fee for activities of transition advisory committee -- failure to pay -- penalty -- statute of limitations. (1) On or before June 30 in each year, the department of revenue shall:

(a) determine the total gross operating revenue generated by all activities within this state for all electric utility companies for the previous fiscal year;

(b) compute the percentage, subject to revision as provided in subsection (2), of the amount determined in subsection (1)(a) that will produce an amount equal to the appropriation to the legislative services division, except that an electric utility company owned and operated by any municipal corporation within this state may not be required to pay a sum in excess of 0.06 of 1% of its gross operating revenue;

(c) adjust the percentage multiplier computed in subsection (1)(b) to ensure that sufficient funds are generated to meet the appropriation and that excess funds are not generated or retained; and

(d) give notice by mail to each electric utility company of the percentage to be applied to the gross operating revenue to determine the amount of the fee to be paid.

(2) (a) The department of revenue shall adjust the percentage multiplier if the department considers a change necessary to meet or to not exceed the amount to be raised by the fee because of:

(i) fluctuations in the actual gross operating revenue subject to the fee; or

(ii) submission and approval of a budget amendment authorizing the spending of money from a contingency appropriation included in the appropriation for the legislative services division in support of the activities of the transition advisory committee and authorized to be raised by means of the fee.

(b) Adjustments of the percentage multiplier are subject to the exception provided in subsection (1)(b) for municipally owned and operated electric utility companies.

(c) Electric utility companies must be given at least 30 days' notice of any change in the percentage multiplier.

(d) Any change in the percentage multiplier is effective at the beginning of the next calendar quarter.

(3) In the event that the fee charged in 1 year is in excess of the amount actually expended in that year, the excess must be deducted from the amount required to be raised by the fee for the next year before the determination required by subsection (1) is made. Money remaining unspent at the close of the fiscal year must be used to reduce the percentage calculated under this section in the subsequent fiscal year.

(4) All fees paid by an electric utility company pursuant to this section are immediately recoverable by the electric utility company in its rates and charges. Within 30 days after the issuance by the department of revenue of the notice required by subsection (1), the commission shall by separate order authorize each electric utility company to fully recover in its rates and charges, on an annual basis, the fees levied by this section.

(5) (a) If an electric utility company fails, neglects, or refuses to file a statement or to pay the fee required by [section 45] or this section, the department of revenue shall collect the fee in the same manner as the fee for the office of the legislative consumer counsel is collected in 69-1-225 through 69-1-230.

(b) The penalty for failure to pay the fee imposed under [section 45] and this section is the same as the penalty under 69-1-226.

(c) An overpayment of the fee must be processed in the same manner as an overpayment is processed under 69-1-228.

(d) The statute of limitations for a deficiency assessment is the same as provided in 69-1-230."

NEW SECTION. Section 47. Appropriation. There is appropriated from the fees collected under [sections 45 and 46] to the legislative services division \$76,000 for the activities of the transition advisory committee on electric utility industry restructuring. This is a biennial

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Page 9 of 9

appropriation.
Renumber: subsequent sections

51. Page 43, lines 12 and 13.
Following: "31"
Insert: ", 45, and 46"

-END-

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Representatives Clark and Hibbard excused at this time.

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Representative Grinde moved the House resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Representative Simon in the Chair.

Mr. Speaker: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 390 - Representative Ryan moved SB 390 be concurred in.

Representative Quilici moved SB 390, second reading copy, be amended as follows (amendment #1):

1. Title, lines 15 through 17.

Strike: "IMPOSING" on line 15 through "COMMITTEE;" on line 17

2. Page 14, line 15.

Following: "(10)"

Strike: "PUBLIC"

Insert: "During the 4-year transition period, public"

3. Page 14, line 17.

Following: "EARNINGS"

Insert: "if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%"

4. Page 44, line 1 through page 46, line 21.

Strike: sections 45 and 46 in their entirety

Renumber: subsequent sections

5. Page 46, lines 23 through 26.

Following: "APPROPRIATION." on line 23, strike the remainder of line 23 through "." on line 26

Insert: "(1) The legislative services division may accept gifts, grants, or other donations for the purpose of offsetting the costs of conducting the activities of the transition advisory committee under [section 29] or the study required in [section 30].

(2) A gift, grant, or other donation made by a public utility, as defined in 69-3-101(1)(a), (1)(c), or (1)(d), is a cost that is nonrecoverable from ratepayers and must be borne 100% by the shareholders of the company making the gift, grant, or donation.

(3) The legislative services division is appropriated up to \$200,000 of any gifts, grants, or other donations received under this section, and the appropriation is a biennial appropriation.

(4) If the amount of gifts, grants, or donations exceeds the amount appropriated under subsection (3), the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received.

(5) If the amount of the gifts, grants, and donations expended for conducting the activities of the transition advisory committee under [section 29] or the study required in [section 30] is less than the amount received

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EIGHTIETH LEGISLATIVE DAY - APRIL 15, 1997

as gifts, grants, or donations, the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received."

6. Page 47, lines 9 and 11.

Strike: "45, and 46"

Amendment #1 passed as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Barnett, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Clark, Cocchiarella, Denny, Devaney, Dowell, Ellis, Feland, Galvin, Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harrington, Hayne, Holland, J. Johnson, R. Johnson, Jore, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McGee, Menahan, Mills, Mood, Ohs, Pavlovich, Pease, Prouse, Quilici, Ream, Rehbein, Rose, Ryan, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Vick, Wagner, Walters, Wells, Whitehead, Wiseman, Zook, Mr. Speaker.

Total 79

Noes: Bankhead, Barnhart, Cobb, Curtiss, DeBruycker, Ellingson, Ewer, Harper, Heavy Runner, Hurdle, McCann, McCulloch, Orr, Peck, Raney, Tuss, Wyatt.

Total 17

Voted Absentee: Clark, Aye.

Excused: Hibbard.

Total 1

Absent or not voting: Molnar, Sands, Schmidt.

Total 3

Representative Ewer moved SB 390, second reading copy, be further amended (amendment #2). Motion failed as follows: (29-69)

Representative Ewer moved SB 390, second reading copy, be further amended (amendment #3). Motion failed as follows: (26-71)

Representative Ewer moved SB 390, second reading copy, be further amended (amendment #4). Motion failed as follows: (30-67)

Representative Ewer moved SB 390, second reading copy, be further amended (amendment #5).

Representative Sliter assumed the Chair at this time.

Amendment #5 failed as follows: (26-72)

Representative Cobb moved SB 390, second reading copy, be further amended (amendment #6). Motion failed as follows: (37-58)

Representative Ewer moved SB 390, second reading copy, be further amended (amendment #7). Motion failed as follows: (23-74)

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EIGHTIETH LEGISLATIVE DAY - APRIL 15, 1997

Representative Ewer moved SB 390, second reading copy, be further amended (amendment #8). Motion failed as follows: (30-68)

Representative Cobb moved SB 390, second reading copy, be further amended (amendment #9). Motion failed as follows: (37-60)

Representative Tuss moved SB 390, second reading copy, be further amended (amendment #10). Motion failed as follows: (28-69)

Representative Cobb moved SB 390, second reading copy, be further amended (amendment #11). Motion failed as follows: (42-54)

Motion to concur in SB 390, as amended, carried as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Bankhead, Barnett, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Clark, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellis, Feland, Galvin, Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harrington, Hayne, Holland, J. Johnson, R. Johnson, Jore, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McGee, Menahan, Mills, Molnar, Mood, Ohs, Orr, Pavlovich, Prouse, Quilici, Rehbein, Rose, Ryan, Schmidt, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Story, Stovall, Swanson, Tash, Taylor, Trexler, Vick, Wagner, Walters, Wells, Wiseman, Zook, Mr. Speaker.

Total 78

Noes: Barnhart, Carey, Cobb, Dowell, Ellingson, Ewer, Harper, Heavy Runner, Hurdle, McCann, McCulloch, Pease, Peck, Raney, Ream, Sands, Squires, Tropila, Tuss, Whitehead, Wyatt.

Total 21

Voted Absentee: Clark, Aye.

Excused: Hibbard.

Total 1

Absent or not voting: None.

Total 0

SB 396 - Representative Simon moved SB 396 be concurred in. Motion carried as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Clark, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Dowell, Ellis, Feland, Galvin, Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Holland, J. Johnson, R. Johnson, Jore, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Orr, Pavlovich, Pease, Peck, Prouse, Quilici, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Walters, Wells, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 93

Noes: Cobb, Ellingson, Ewer, Hurdle, Kasten, Raney.

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Total 0

HB 131, conference committee report, adopted as follows:

Ayes: Adams, Ahner, Anderson, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, Denny, Devaney, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Kasten, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, Menahan, Mills, Molnar, Mood, Ohs, Pavlovich, Pease, Peck, Prouse, Quilici, Raney, Ream, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Walters, Wells, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 90

Noes: Arnott, Bergsagel, DeBruycker, Jore, Keenan, Orr, Rehbein, Vick, Wagner.

Total 9

Excused: None.

Total 0

Absent or not voting: McGee.

Total 1

HJR 32 passed as follows:

Ayes: Ahner, Anderson, Bankhead, Barnett, Barnhart, Beaudry, Bitney, Boharski, Bohlinger, Bookout, Carey, Clark, Cobb, DeBruycker, Dowell, Ellingson, Ellis, Ewer, Galvin, Gillan, Grady, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Kasten, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Pavlovich, Pease, Peck, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Walters, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 80

Noes: Adams, Arnott, Bergman, Bergsagel, Brainard, Cocchiarella, Curtiss, Denny, Devaney, Feland, Grimes, Grinde, Jore, Keenan, Orr, Prouse, Sliter, Vick, Wagner, Wells.

Total 20

Excused: None.

Total 0

Absent or not voting: None.

Total 0

Third Reading

SB 390 concurred in as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Bankhead, Barnett, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Clark, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellis, Feland, Galvin,

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Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harrington, Hayne, Holland, J. Johnson, R. Johnson, Jore, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McGee, Menahan, Mills, Molnar, Mood, Ohs, Orr, Pavlovich, Prouse, Quilici, Rehbein, Rose, Ryan, Schmidt, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Story, Stovall, Swanson, Tash, Taylor, Trexler, Vick, Wagner, Walters, Wells, Wiseman, Zook, Mr. Speaker.

Total 78

Noes: Barnhart, Carey, Cobb, Dowell, Ellingson, Ewer, Harper, Heavy Runner, Hurdle, McCann, McCulloch, Pease, Peck, Raney, Ream, Sands, Squires, Tropila, Tuss, Whitehead, Wyatt.

Total 21

Excused: None.

Total 0

Absent or not voting: Hibbard.

Total 1

SB 396 concurred in as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Bankhead, Barnett, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Clark, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Dowell, Feland, Galvin, Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Holland, J. Johnson, R. Johnson, Jore, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Orr, Pavlovich, Prouse, Quilici, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Walters, Wells, Whitehead, Wiseman, Zook, Mr. Speaker.

Total 88

Noes: Barnhart, Carey, Cobb, Ellingson, Ewer, Hurdle, Pease, Peck, Raney, Wyatt.

Total 10

Excused: None.

Total 0

Absent or not voting: Ellis, Hibbard.

Total 2

SB 48, conference committee report, adopted as follows:

Ayes: Ahner, Anderson, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellis, Feland, Galvin, Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harrington, Hayne, Heavy Runner, Hibbard, Holland, J. Johnson, R. Johnson, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Orr, Pavlovich, Pease, Peck, Prouse, Quilici, Rose, Ryan, Schmidt, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Wagner, Walters, Wells, Whitehead, Wiseman, Zook, Mr. Speaker.

Total 82

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Absent or not voting: None.
Total 0

Excused: Foster.
Total 1

SB 386-House Amendments - Senator Gage moved House Amendments to SB 386 be adopted. Motion carried unanimously.

Senate 2nd Reading - House Amendments

SB 390-House Amendments - Senator Thomas moved House Amendments to SB 390 be adopted. Motion carried unanimously.

SJR 19 - Senator Bishop moved SJR 19 be adopted. Motion failed as follows:

Yeas: Bartlett, Beck, Bishop, Brooke, Crippen, Doherty, Eck, Emerson, Estrada, Glaser, Grosfield, Halligan, Hargrove, Jenkins, Jergeson, Lynch, Mahlum, Shea, Sprague, Stang, Thomas, Van Valkenburg, Wilson.
Total 23

Nays: Baer, Benedict, Burnett, Christiaens, Cole, Crismore, DePratu, Devlin, Franklin, Gage, Harp, Hertel, Holden, Jabs, Keating, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Swysgood, Taylor, Toews, Waterman, Mr. President.
Total 26

Absent or not voting: None.
Total 0

Excused: Foster.
Total 1

Senator Foster present at this time.

HB 142 - Senator Hertel moved HB 142 be concurred in. Motion failed as follows:

Yeas: Baer, Benedict, Brooke, Burnett, Christiaens, Cole, Crismore, Emerson, Foster, Glaser, Halligan, Hargrove, Hertel, Holden, Jabs, Jergeson, Keating, McNutt, Mesaros, Miller, Sprague, Thomas, Toews, Van Valkenburg, Mr. President.
Total 25

Nays: Bartlett, Beck, Bishop, Crippen, DePratu, Devlin, Doherty, Eck, Estrada, Franklin, Gage, Grosfield, Harp, Jenkins, Lynch, Mahlum, McCarthy, Mohl, Nelson, Shea, Stang, Swysgood, Taylor, Waterman, Wilson.
Total 25

Absent or not voting: None.
Total 0

Excused: None.
Total 0

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Absent or not voting: None.

Total 0

Excused: Burnett.

Total 1

SB 381-Conference Committee Report No.1, passed as follows:

Yeas: Baer, Beck, Benedict, Bishop, Cole, Crismore, DePratu, Devlin, Emerson, Estrada, Foster, Gage, Glaser, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Jergeson, Keating, Mahlum, McNutt, Mesaros, Miller, Mohl, Sprague, Swysgood, Taylor, Thomas, Toews, Mr. President.

Total 33

Nays: Bartlett, Brooke, Christiaens, Crippen, Doherty, Eck, Franklin, Halligan, Lynch, McCarthy, Nelson, Shea, Stang, Van Valkenburg, Waterman, Wilson.

Total 16

Absent or not voting: None.

Total 0

Excused: Burnett.

Total 1

SB 386, as amended by the House, passed as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Eck, Emerson, Estrada, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Taylor, Thomas, Van Valkenburg, Waterman, Wilson, Mr. President.

Total 48

Nays: Toews.

Total 1

Absent or not voting: None.

Total 0

Excused: Burnett.

Total 1

SB 390, as amended by the House, passed as follows:

Yeas: Baer, Beck, Benedict, Burnett, Cole, Crippen, Crismore, DePratu, Devlin, Emerson, Estrada, Foster, Glaser, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Shea, Sprague, Swysgood, Thomas, Toews, Wilson, Mr. President.

Total 35

Nays: Bartlett, Bishop, Brooke, Christiaens, Doherty, Eck, Franklin, Gage, Halligan, Jergeson, Nelson, Stang.

Senate 3rd Reading - House Amendments

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Taylor, Van Valkenburg, Waterman.
Total 15

Paired: Burnett, Aye; Brooke, No.

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 396, as amended by the House, passed as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Brooke, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Eck, Emerson, Estrada, Foster, Franklin, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.
Total 46

Nays: Bishop, Gage, Jergeson.
Total 3

Absent or not voting: None.
Total 0

Excused: Burnett.
Total 1

HB 102-Free Conference Committee Report No.1, concurred in as follows:

Yeas: Baer, Benedict, Bishop, Cole, Crippen, Crismore, DePratu, Devlin, Eck, Emerson, Estrada, Foster, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Lynch, McCarthy, McNutt, Mesaros, Miller, Shea, Sprague, Stang, Taylor, Thomas, Toews, Wilson, Mr. President.
Total 35

Nays: Bartlett, Beck, Brooke, Christiaens, Doherty, Franklin, Gage, Jergeson, Mahlum, Mohl, Nelson, Swysgood, Van Valkenburg, Waterman.
Total 14

Absent or not voting: None.
Total 0

Excused: Burnett.
Total 1

HB 164-Free Conference Committee Report No.1, concurred in as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin,

SENATE BILL NO. 390

INTRODUCED BY THOMAS, QUILICI, HARP, BERGSAGEL, SLITER, MOLNAR, BEAUDRY, MASOLO,
GRINDE, MAHLUM, MENAHAN, DEVLIN, SHEA, CHRISTIAENS, SIMPKINS, STANG, DEPRATU,
L. TAYLOR, HARRINGTON, BOOKOUT-REINICKE, STORY, OHS, PAVLOVICH, DEVANEY, JABS,
REHBEIN, KEATING, TOEWS, TROPILA, ORR, FOSTER, LYNCH, GALVIN, MCCARTHY, BECK, RYAN,
EMERSON, KITZENBERG, DEBRUYCKER, HERTEL, MILLS, GRADY, HALLIGAN, M. TAYLOR,
GROSFIELD, WILSON, NELSON, CLARK, TASH, BISHOP, BENEDICT, SPRAGUE, COLE, MOHL, ELLIS,
JENKINS, KOTTEL, WYATT, DENNY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS
FORMONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING
THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES
FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES
IN CLASS NINE PROPERTY; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE TRANSITION
ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; IMPOSING A FEE ON
ELECTRIC UTILITY COMPANIES TO SUPPORT THE ACTIVITIES OF THE TRANSITION ADVISORY
COMMITTEE; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104, 69-5-105,
69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING SECTION
69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required because this bill provides the public service commission with
rulemaking authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 31] may be cited as the "Electric Utility
Industry Restructuring and Customer Choice Act".

NEW SECTION. **Section 2. Legislative findings and policy.** The legislature finds and declares the

1 following:

2 (1) The generation and sale of electricity is becoming a competitive industry.

3 (2) Montana customers should have the freedom to choose their supplier of electricity and related
4 services in a competitive market as soon as administratively feasible. Affording this opportunity serves the
5 public interest.

6 (3) The INTERESTS OF MONTANA CONSUMERS SHOULD BE PROTECTED AND THE financial
7 integrity of electrical utilities should be fostered WHILE RECOGNIZING THE INTERESTS OF MONTANA
8 CONSUMERS.

9 (4) The public interest requires the continued protection of consumers through:

10 (a) licensure of electricity suppliers;

11 (b) provision of information to consumers regarding electricity supply service;

12 (c) provision of a process for investigating and resolving complaints;

13 (d) continued funding for public purpose programs for:

14 (i) cost-effective local energy conservation;

15 (ii) low-income customer weatherization;

16 (iii) renewable resource PROJECTS AND applications;

17 (iv) research and development programs related to energy conservation and renewables;

18 (v) market transformation; and

19 (vi) low-income energy ~~bill~~ assistance;

20 (e) assurance of service reliability and quality; and

21 (f) prevention of anticompetitive and abusive activities.

22 (5) A UTILITY IN THE STATE OF MONTANA MAY NOT BE ADVANTAGED OR DISADVANTAGED
23 IN THE COMPETITIVE ELECTRICITY SUPPLY MARKET, INCLUDING THE CONSIDERATION OF THE
24 EXISTENCE OF UNIVERSAL SYSTEM BENEFITS PROGRAMS AND THE COMPARABLE LEVEL OF FUNDING
25 FOR THOSE PROGRAMS THROUGHOUT THE REGIONS NEIGHBORING MONTANA.

26
27 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 31], unless the context
28 requires otherwise, the following definitions apply:

29 (1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that
30 aggregates retail customers and purchases electric energy and takes title to electric energy as an

intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust or financing vehicle, to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; OR

(b) an existing municipal ELECTRIC utility as of [the effective date of this act]; ~~or,~~

~~(c) a federally owned and locally managed electric utility in the state of Montana that is operated under contract between a federally recognized Indian tribe and the United States.~~

(6) "Customer" or "consumer" means a retail electric customer or consumer. THE UNIVERSITY OF MONTANA, PURSUANT TO 20-25-201(1), AND MONTANA STATE UNIVERSITY, PURSUANT TO 20-25-201(2), ARE EACH CONSIDERED A SINGLE RETAIL ELECTRIC CUSTOMER OR CONSUMER WITH A SINGLE INDIVIDUAL LOAD.

(7) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(8) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public.

(9) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers' offering to sell electricity to retail customers in the state of Montana.

(10) "Financing order" means an order of the commission adopted in accordance with [section 31] that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

1 (i) distribution;

2 (ii) connection;

3 (iii) disconnection; and

4 (iv) termination rates and charges that are authorized by the commission in a financing order to
5 permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the
6 transition costs and acquiring transition property through a plan approved by the commission in the
7 financing order, including the costs of issuing, servicing, and retiring transition bonds.

8 (b) If requested by the utility in the utility's application for a financing order, fixed transition
9 amounts must include nonbypassable rates or charges to recover federal and state taxes in which the
10 transition cost recovery period is modified by the transactions approved in the financing order.

11 (12) "Functionally separate" means a utility's separation of the utility's electricity supply,
12 transmission, distribution, and unregulated retail energy services assets and operations.

13 (13) "Local governing body" means a local board of trustees of a rural electric cooperative.

14 (14) "Low-income customer" means those energy consumer households and families with incomes
15 at or below industry-recognized levels that qualify those consumers for low-income energy-related
16 assistance.

17 (15) "Nonbypassable rates or charges" means rates or charges approved by the commission
18 imposed ~~by~~ ON a customer to pay the customer's share of transition costs or universal system benefits
19 program costs even if the customer has physically bypassed either the utility's transmission or distribution
20 facilities.

21 (16) "Pilot program" means a program using a representative sample of residential and small
22 commercial customers to assist in developing and offering customer choice of electric supply for all
23 residential and commercial customers.

24 (17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69,
25 chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

26 (18) "Transition bondholder" means a holder of transition bonds including trustees, collateral
27 agents, and other entities acting for the benefit of that holder.

28 (19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust
29 certificate, or other evidence of indebtedness or ownership ISSUED BY THE BOARD OR OTHER
30 TRANSITION BONDS ISSUER that is secured by or payable from fixed transition amounts or transition

property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(20) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(21) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(22) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of [sections 1 through 31] or of federal law requiring retail open access or customer choice.

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan AND CONSERVATION INVESTMENTS MADE PRIOR TO UNIVERSAL SYSTEM BENEFITS CHARGE IMPLEMENTATION;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before [the effective date of this act] AND COSTS ARISING FROM THESE INVESTMENTS AND COMMITMENTS;

(iv) the costs associated with any renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to [sections 1 through 31], during which utilities may phase in customer choice of electricity supplier.

(24) "Transition property" means the property right created by a financing order including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition

1 amounts that are the subject of a financing order including those nonbypassable rates and other charges
2 and fixed transition amounts that are authorized by the commission in the financing order to recover
3 transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and
4 acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any
5 right that a utility has in the transition property before the utility's sale or transfer or any other right created
6 under this section or created in the financing order and assignable under [sections 1 through 31] or
7 assignable pursuant to a financing order is only a contract right.

8 (25) "Transmission facilities" means those facilities that are used to provide transmission services
9 as determined by the federal energy regulatory commission and the commission.

10 (26) "Transmission services provider" means a person controlling or operating transmission facilities.

11 (27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on
12 a customer to pay the customer's share of universal system benefits program costs.

13 (28) "Universal system benefits programs" means public purpose programs for:

14 (a) cost-effective local energy conservation;

15 (b) low-income customer weatherization;

16 (c) renewable resource PROJECTS AND applications, including those that capture unique social and
17 energy system benefits or provide transmission and distribution system benefits;

18 (d) research and development programs related to energy conservation and renewables;

19 (e) market transformation designed to encourage competitive markets for public purpose programs;

20 and

21 (f) low-income energy bill assistance ~~as approved by the commission.~~

22 (29) "Utility" means any public utility or cooperative utility.

23
24 NEW SECTION. **Section 4. Pilot programs.** (1) Except as provided in [sections 5(4) and 20],
25 beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their
26 residential and small commercial customers. A report describing and analyzing the results of the pilot
27 programs must be submitted to the commission and the transition advisory committee established in
28 [section 29] on or before July 1, 2000.

29 (2) Utilities shall use pilot programs to gather necessary information to determine the most effective
30 and timely options for providing customer choice. Necessary information includes but is not limited to:

- 1 (a) the level of demand for electricity supply choice and the availability of market prices for smaller
- 2 customers;
- 3 (b) the best means to encourage and support the development of sufficient markets and bargaining
- 4 power for the benefit of smaller customers;
- 5 (c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing
- 6 service to smaller customers; and
- 7 (d) experience in the broad range of technical and administrative support matters involved in
- 8 designing and delivering unbundled retail services to smaller customers.

9
10 **NEW SECTION. Section 5. Public utility -- transition to customer choice -- waiver.** (1) A public
11 utility shall, except as provided in this section, adhere to the following deadlines:

12 (a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and
13 for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate
14 to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

15 (b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002,
16 all other public utility customers must have the opportunity to choose an electricity supplier.

17 (2) (a) Except as provided for in subsection (3), the commission may determine that additional time
18 is necessary for customers identified in subsection (1)(b); however, the implementation of full customer
19 choice may not be delayed beyond July 1, 2004.

20 (b) A determination by the commission that additional time is necessary for subsection (1)(b)
21 customers must be made at least 60 days in advance of the scheduled date and must be based on one or
22 more of the following considerations:

- 23 (i) implementation would not be administratively feasible;
- 24 (ii) implementation would materially affect the reliability of the electric system; or
- 25 (iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive
- 26 electricity supply market.

27 (3) Except as provided in ~~section~~ **SECTIONS 22 AND 34 THROUGH 44**, a public utility currently
28 doing business in Montana as part of a single integrated multistate operation, no portion of which lies within
29 the basin of the Columbia River may:

- 30 (a) defer compliance with ~~this section~~ **SECTIONS 1 THROUGH 31** until a time that the public utility

1 can reasonably implement customer choice in the state of the public utility's primary service territory except
2 that the public utility shall file a transition plan pursuant to [section 6] to provide transition to customer
3 choice on or before July 1, 2002, and must have completed the transition period to customer choice by
4 July 1, 2006; and

5 (b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

6 (4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive
7 compliance with the requirements of [sections 4, 6 THROUGH 12, 22, and this section].

8
9 **NEW SECTION. Section 6. Public utility -- transition plans.** (1) All public utilities, pursuant to
10 [sections 1 through 31], shall submit a transition plan to the commission. Plans must be filed with the
11 commission not later than 1 year before the date by which any customers of the public utility are entitled
12 to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public
13 utilities that are required to file plans. The transition plan must demonstrate that the public utility meets
14 all the requirements of [sections 1 through 31].

15 (2) The commission shall develop a procedural schedule that includes:

16 (a) a preliminary transition plan determination including the commission's findings on whether the
17 plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

18 (b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

19 (3) Unless waived by the public utility, the commission shall issue a final order approving,
20 MODIFYING, or denying the transition plan before 9 months after the date a public utility files a plan. All
21 parties are afforded an opportunity for hearing before issuance of the final order.

22 (4) The commission shall process a request for approval of a transition plan pursuant to the
23 contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

24 (5) On approval of the plan, the commission shall enforce the public utility obligations as
25 incorporated in the plan and in the commission's final order.

26
27 **NEW SECTION. Section 7. Public utility -- customer choice -- continued service -- education of**
28 **customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines
29 established in [section 5]. Public utilities shall propose a method for customers to choose an electricity
30 supplier.

(2) If a customer has not chosen an electricity supplier by the end of the transition period, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier.

(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in [section 5].

(4) Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period.

NEW SECTION. Section 8. Public utility -- functional separation, divestiture, and nondiscrimination.

(1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

(2) The commission may not order a public utility to divest itself of any generation assets or prohibit a public utility from divesting itself voluntarily of any generation assets.

(3) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

(4) The provisions of this section are satisfied if the public utility adopts and complies with A CODE OF CONDUCT CONSISTENT WITH federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

NEW SECTION. Section 9. Public utility -- distribution services. (1) A public utility's distribution services provider shall:

(a) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) When a distribution services provider acts as an emergency supplier of electricity and related services to customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider at the higher of a multiple of the cost or a multiple of the then existing market rate for that electricity. The commission shall determine and authorize the multiple used. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

NEW SECTION. Section 10. Public utilities -- transmission services. For transmission services regulated by the commission, public utilities, through filed tariffs, shall make transmission services available for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and by customers.

NEW SECTION. Section 11. Public utilities -- electricity supply. (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to [section 6], the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended ~~for certain customers~~, then the customers' distribution services provider shall:

(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term not more than 3 years; or

(b) purchase electricity from the market; AND

~~(4) A tracking~~ **(C) USE A** mechanism ~~must be used to recover~~ **THAT RECOVERS** electricity supply costs in rates to ensure that those costs are fully recovered.

(5) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to [section 24].

NEW SECTION. Section 12. Public utilities -- transition costs and charges -- rate moratorium. (1)

Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including ~~any~~ REASONABLE buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) The unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to [section 6(3)]; and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party ~~profession~~ PROFESSIONALS; ~~and~~ OR

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be ~~prudent~~ or used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in [sections 1 through 31], only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from CUSTOMERS FOR:

(i) ~~customers with new~~ OR ADDITIONAL loads of 1,000 kilowatts or greater that were ~~connected to either the public utility's transmission or distribution facilities~~ FIRST SERVED BY THE PUBLIC UTILITY after December 31, 1996; or

(ii) ~~customers generating electricity for their own use~~ LOADS SERVED BY THAT CUSTOMER'S OWN GENERATION.

(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. PUBLIC UTILITIES MAY FILE WITH THE COMMISSION TARIFFS FOR ELECTRIC SERVICE RATES THAT FOSTER ECONOMIC DEVELOPMENT OR RETENTION OF EXISTING CUSTOMERS WITHIN THE STATE, INCLUDING GENERALLY AVAILABLE RATE SCHEDULES. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by [sections 1 through 31] may not collect transition charges with respect to these transition costs.

~~(6) Public utilities may not charge rates or collect costs, which include costs reallocated to transition costs, at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact, with the exception of:~~

~~(a) increased costs related to universal system benefits charges greater than those currently included in rates; and~~

~~(b) increased costs necessary to implement full customer choice, including but not limited to~~

1 metering, billing, and technology from those customers on whose behalf those increased costs are incurred.

2 (7) If transition bonds are authorized pursuant to [section 31], any savings, net of consolidated tax
3 impacts, must be used to fund a partial or full rate moratorium for 2 years during the transition period
4 except as provided in [section 6], to the extent possible to fund transition costs mitigation or shortened
5 transition cost recovery periods.

6 (8) A public utility shall address in the public utility's transition plan reasonable transition
7 bond related rate moratorium and transition costs adjustment opportunities that may exist for the benefit
8 of customers. The transition plan may include proposed provisions for rate adjustments due to
9 extraordinary events during the same time period.

10 (6) EXCEPT AS PROVIDED IN SUBSECTION (7), PUBLIC UTILITIES SHALL IMPLEMENT A RATE
11 MORATORIUM DURING THE TRANSITION PERIOD AS FOLLOWS:

12 (A) FROM JULY 1, 1998, THROUGH JUNE 30, 2000, PUBLIC UTILITIES MAY NOT CHARGE RATES
13 HIGHER THAN THOSE RATES IN EFFECT ON JULY 1, 1998.

14 (B) FROM JULY 1, 2000, THROUGH JUNE 30, 2002, AND ONLY FOR THOSE CUSTOMERS
15 SUBJECT TO THE PROVISIONS OF [SECTION 5(1)(B)], PUBLIC UTILITIES MAY NOT INCREASE THAT
16 INCREMENT OF RATES NORMALLY ALLOCATED TO ELECTRIC SUPPLY-RELATED COSTS ABOVE THE
17 INCREMENT ASSOCIATED WITH ELECTRIC SUPPLY-RELATED COSTS REFLECTED IN RATES IN EFFECT
18 ON JULY 1, 1998. BEGINNING ON JULY 1, 2000, PUBLIC UTILITIES MAY PROPOSE INCREASES TO
19 THOSE INCREMENTS OF RATES NORMALLY ALLOCATED TO TRANSMISSION AND DISTRIBUTION
20 COSTS.

21 (7) EXCEPTED FROM THE PROVISIONS OF SUBSECTION (6) ARE:

22 (A) INCREASED COSTS RELATED TO UNIVERSAL SYSTEM BENEFITS PROGRAMS GREATER THAN
23 THOSE CURRENTLY IN RATES, INCLUDING THE TREATMENT OF UNIVERSAL SYSTEM BENEFITS
24 PROGRAM COSTS AS AN EXPENSE;

25 (B) INCREASED COSTS NECESSARY TO IMPLEMENT FULL CUSTOMER CHOICE, INCLUDING BUT
26 NOT LIMITED TO METERING, BILLING, AND TECHNOLOGY. THOSE COSTS MUST BE RECOVERED FROM
27 THE CUSTOMERS ON WHOSE BEHALF THE INCREASED COSTS ARE INCURRED.

28 (C) SUBJECT TO COMMISSION APPROVAL, AN EXTRAORDINARY EVENTS EVENT RESULTING
29 IN EITHER:

30 (I) A 4% ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY 1, 1998, THROUGH JUNE 30,

1 2000; OR

2 (II) AN 8% POWER SUPPLY-RELATED ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY
3 1, 2000, THROUGH JUNE 30, 2002;

4 (D) PORTIONS OF THE INCREASE OR DECREASE IN THE ANNUAL STATE AND LOCAL PROPERTY
5 TAX EXPENSE THAT ARE GREATER THAN THE PAYMENT OR ADJUSTMENT THAT RESULTS FROM
6 APPLYING THE INDUSTRY-RECOGNIZED RATES OF INFLATION TO THE INCREASE OR DECREASE IN THE
7 STATE AND LOCAL PROPERTY TAX EXPENSE REFLECTED IN RATES AS OF [THE EFFECTIVE DATE OF
8 THIS ACT].

9 (8) NOTWITHSTANDING SUBSECTIONS (6) AND (7), DURING THE TRANSITION PERIOD, PUBLIC
10 UTILITIES MAY NOT CHARGE RATES OR COLLECT COSTS THAT INCLUDE COSTS REALLOCATED TO
11 TRANSITION COSTS AT A LEVEL HIGHER THAN THE PUBLIC UTILITY WOULD REASONABLY EXPECT TO
12 RECOVER IN RATES HAD THE CURRENT REGULATORY SYSTEM REMAINED INTACT.

13 (9) PUBLIC UTILITIES SHALL APPLY SAVINGS RESULTING UNDER [SECTION 31] TOWARD THE
14 RATE MORATORIUM PURSUANT TO SUBSECTION (6).

15 (10) PUBLIC DURING THE 4-YEAR TRANSITION PERIOD, PUBLIC UTILITIES MAY ACCELERATE
16 THE AMORTIZATION OF ACCUMULATED DEFERRED INVESTMENT TAX CREDITS ASSOCIATED WITH
17 TRANSMISSION, DISTRIBUTION, AND THE GENERAL PLANT AS AN ADJUSTMENT TO EARNINGS IF
18 ELECTRIC EARNINGS FALL BELOW 9.5% EARNED RETURN ON AVERAGE EQUITY. THE PUBLIC UTILITY
19 MAY INCLUDE THE FLOW THROUGH OF INVESTMENT TAX CREDITS SO THAT THE PUBLIC UTILITY'S
20 EARNED RETURN ON EQUITY IS MAINTAINED AT 9.5%. ACCUMULATED DEFERRED INVESTMENT TAX
21 CREDITS AMORTIZED UNDER THIS SUBSECTION MAY NOT BE REFLECTED IN OPERATING INCOME FOR
22 RATEMAKING PURPOSES.

23 ~~(9)(11)~~ The commission shall issue the accounting orders necessary to align rate moratorium timing
24 and requirements to actual transition bonds savings.

25 ~~(10) If transition bonds are issued, cost savings associated with and resulting from the bonds must~~
26 ~~benefit customers.~~

27
28 **NEW SECTION. Section 13. Cooperative utility -- transition plan for customer choice.** (1) Except
29 as provided in [section 20], on or before July 1, 2001, the local governing body of a cooperative utility shall
30 adopt a transition plan.

1 (2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that
2 may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have
3 the opportunity to choose an electricity supplier.

4 (b) If after a pilot program for customers of a cooperative utility with loads less than 1,000
5 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not
6 developed, then the transition plan may be altered by the cooperative utility's governing body for those
7 customers.

8 (3) [Sections 1 through 31] do not require the cooperative utility to divest itself of any generation,
9 transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those
10 assets.

11 (4) A cooperative utility's local governing body shall certify to the commission that the local
12 governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative
13 utility shall provide to the commission documentation that the cooperative utility's transition plan is
14 consistent with [sections 1 through 31].

15
16 **NEW SECTION. Section 14. Cooperative utility -- customer choice -- education of customers --**
17 **continued service.** (1) Except as provided in [section 20], cooperative utilities shall propose a method for
18 cooperative utility customers to choose an electricity supplier.

19 (2) Customer choice may be phased in to promote the orderly transition to a competitive market
20 environment.

21 (3) Cooperative utilities shall educate their customers about customer choice so that customers may
22 make an informed choice of an electricity supplier. This education process must give special emphasis to
23 education efforts during the transition period.

24 (4) If a cooperative utility customer has not chosen an electricity supplier by the end of the
25 transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity
26 supplier designated by the cooperative utility.

27
28 **NEW SECTION. Section 15. Cooperative utility -- functional separation.** (1) To the extent that a
29 cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the
30 cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets

1 and operations in the state of Montana. If the cooperative utility intends to exercise this option, the
2 cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

3 (2) A cooperative utility shall describe in the transition plan measures taken by the cooperative
4 utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and
5 in favor of the cooperative utility's affiliates, if any.

6 (3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory
7 commission's code of conduct established in 18 CFR, part 37.

8
9 **NEW SECTION. Section 16. Cooperative utility -- distribution services.** (1) A cooperative utility
10 transition plan must include distribution facility tariffs that must be established by the cooperative utility's
11 local governing body and must include the obligation for the cooperative utility to:

12 (a) make distribution services available to all electricity suppliers, transmission services providers,
13 and customers on a nondiscriminatory and comparable basis;

14 (b) build and maintain distribution facilities; and

15 (c) be an emergency supplier of electricity and related services.

16 (2) If a distribution services provider acts as an emergency supplier of electricity and related
17 services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual
18 obligations shall reimburse the distribution services provider at an amount to be set by the local governing
19 body but may not exceed the higher of a multiple of the cost or a multiple of the then existing market rate
20 for that electricity. The market rate is the highest published rate for electricity purchased within the local
21 load control area at the time that the distribution services provider provided the emergency supply. A
22 distribution services provider is not required to purchase any reserve supply of electricity to fulfill this
23 obligation.

24 (3) Recoverable costs for cooperative utilities must be based upon standard financial reporting
25 statements and may reflect comparable rates of return of other utilities.

26
27 **NEW SECTION. Section 17. Cooperative utility -- transmission services.** Transition plans must
28 state whether the cooperative utility's transmission services, if any, are regulated by the federal energy
29 regulatory commission. If those services are not regulated by the federal energy regulatory commission,
30 the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers,

1 distribution services providers, and customers. A cooperative utility's local governing body shall establish
2 the cooperative utility's transmission tariffs.

3
4 **NEW SECTION. Section 18. Cooperative utility -- electricity supply.** (1) A transition plan may
5 provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer
6 electricity supply service. The local governing body shall establish the price for electricity supply service
7 offered by a cooperative utility.

8 (2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions
9 of [section 24].

10 (3) If a cooperative utility offers electricity supply service competitively to customers using a public
11 utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar
12 structure to serve those customers that allows the entity to be taxed at the same level as other for-profit
13 electricity suppliers.

14
15 **NEW SECTION. Section 19. Cooperative utility -- transition costs and charges.** (1) For the
16 purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative
17 utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may
18 not be recoverable as a result of the transition to a competitive market for electricity supply service.

19 (2) Transition costs eligible for treatment include but are not limited to:

20 (a) regulatory assets and deferred charges typically recoverable in rates;

21 (b) nonutility and utility power purchase contracts;

22 (c) existing commitments or obligations incurred before [the effective date of this act] and other
23 cooperative utility investments rendered uneconomic as a result of the implementation of [sections 1
24 through 31] or the introduction of retail wheeling through federal legislation or regulation;

25 (d) costs associated with any renegotiation or buyout of the existing nonutility and utility power
26 purchase contracts; ~~and~~

27 (e) revenue that appears as a portion of a facility charge necessary to meet debt service
28 requirements, INCLUDING ANY COVERAGE AMOUNTS REQUIRED BY ANY MORTGAGE, INDENTURE, OR
29 OTHER FINANCING DOCUMENT;

30 (F) COSTS OF REFINANCING AND RETIRING DEBT OF THE COOPERATIVE UTILITY AND

1 ASSOCIATED FEDERAL AND STATE TAX LIABILITIES OR OTHER UTILITY COSTS FOR WHICH THE USE
2 OF TRANSITION BONDS WOULD BENEFIT CUSTOMERS; AND

3 (G) ALL COSTS, EXPENSES, AND REASONABLE FEES RELATED TO TRANSITION BONDS.

4 (3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall
5 make reasonable efforts to mitigate those transition costs.

6 (4) Cooperative utilities may not collect any more costs, including costs reallocated to transition
7 costs, at a level higher than would otherwise be anticipated had the current regulatory system remained
8 intact, with the exception of:

9 (a) increased costs related to universal system benefits charges; and

10 (b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.

11 (5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover
12 transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable
13 and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution
14 facilities in the receipt of electricity supply services.

15 (6) A cooperative utility may not collect transition costs from a customer for which the cooperative
16 utility does not have and never has had an obligation to incur costs to provide electricity supply service
17 unless the unmitigated transition costs were incurred solely on behalf of the customer.

18 (7) Approval of and collection of transition costs through a transition charge is a settlement of all
19 transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through
20 any other means may not collect transition charges.

21
22 **NEW SECTION. Section 20. Cooperative utility -- exemption.** (1) Within 1 year after [the effective
23 date of this act], a cooperative utility may file a notice with the commission that the cooperative utility does
24 not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend
25 to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant
26 to [section 22], a cooperative utility filing notice under this section is exempt from the provisions and
27 requirements of [sections 1 through 31].

28 (2) A cooperative utility filing a notice under this section:

29 (a) may elect later to adopt a transition plan in accordance with [sections 1 through 31]; and

30 (b) may not use a public utility's distribution facilities UNLESS PREEXISTING CONTRACTS EXIST.

1 NEW SECTION. Section 21. Maintaining safety and reliability. Utilities shall maintain standards
2 of safety and reliability of the electric delivery system and existing customer service requirements.

3
4 NEW SECTION. Section 22. Universal system benefits programs. (1) Universal system benefits
5 programs are established for the state of Montana to ensure continued funding of AND NEW
6 EXPENDITURES FOR energy conservation, renewable resource PROJECTS AND applications, and
7 low-income energy ~~bill~~ assistance during the transition period and into the future.

8 (2) ~~On or after~~ BEGINNING January 1, 1999, 2.4% of each utility's annual retail sales revenue in
9 Montana for the calendar year ending December 31, 1995, is established as the annual funding level for
10 universal system benefits programs. Unless modified as provided in subsection ~~(12)~~ (7), this funding level
11 remains in effect until July 1, 2003.

12 ~~(3)(A)~~ The recovery of all universal system benefits programs costs imposed pursuant to this
13 section, is authorized through the imposition of a universal system benefits charge assessed at the meter
14 for each local utility system customer as provided in this section.

15 ~~(4)(B)~~ Utilities must receive credit toward annual funding requirements for a utility's internal
16 programs or activities that qualify as universal system benefits programs, INCLUDING THOSE PORTIONS
17 OF EXPENDITURES FOR THE PURCHASE OF POWER THAT ARE FOR THE ACQUISITION OR SUPPORT OF
18 RENEWABLE ENERGY, CONSERVATION-RELATED ACTIVITIES, OR LOW-INCOME ENERGY BILL
19 ASSISTANCE, and for customers' programs or activities as provided in subsection ~~(12)~~ (7).

20 (C) A UTILITY AT WHICH THE SALE OF POWER FOR FINAL END-USE OCCURS IS THE UTILITY
21 THAT RECEIVES CREDIT FOR THE UNIVERSAL SYSTEM BENEFITS PROGRAM EXPENDITURE.

22 (D) FOR A UTILITY TO RECEIVE CREDIT FOR LOW-INCOME RELATED EXPENDITURES, THE
23 ACTIVITY MUST HAVE TAKEN PLACE IN MONTANA.

24 ~~(5)(E)~~ If a utility's or a customer's credit for internal activities do not satisfy the annual funding
25 provisions of subsection (2), then the utility shall make a payment TO THE UNIVERSAL SYSTEM BENEFITS
26 FUND for any difference.

27 ~~(6)(3)~~ Cooperative utilities may COLLECTIVELY pool their statewide credits to satisfy their annual
28 funding requirements for universal system benefits programs ~~or~~ AND low-income energy ~~bill~~ assistance.

29 ~~(7)(4)~~ A utility's transition plan must describe how the utility proposes to provide for universal
30 system benefits programs, including the methodologies, such as cost-effectiveness and need determination,

1 used to measure the utility's level of contribution to each program.

2 ~~(8)(5)~~ A utility's MINIMUM annual funding requirement for low-income energy bill ~~AND~~
3 WEATHERIZATION assistance is established at 17% of the utility's annual universal system benefits funding
4 level and is inclusive within the overall universal system benefits funding level.

5 ~~(9)(A)~~ A utility must receive credit toward the utility's low-income energy bill assistance annual
6 funding requirement for the utility's internal low-income energy bill assistance programs or activities.

7 ~~(10)(B)~~ If a utility's credit for internal activities does not satisfy its annual funding requirement,
8 then the utility shall make a payment for any difference TO THE UNIVERSAL ENERGY BILL ASSISTANCE
9 FUND.

10 ~~(11)(6)~~ An individual customer may not bear a disproportionate share of the local utility's funding
11 requirements, and a sliding scale must be implemented to provide a more equitable distribution of program
12 costs.

13 ~~(12)(7)~~ A customer with loads greater than 1,000 kilowatts shall:

14 (a) pay A UNIVERSAL SYSTEM BENEFITS PROGRAM CHARGE EQUAL TO the lesser of:

15 (i) \$500,000 ~~net of~~ LESS the customer credits provided for in this subsection ~~(12) (7)~~; or

16 (ii) the product of .9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases,
17 ~~net of~~ LESS customer credits provided for in this subsection ~~(12) (7)~~;

18 (b) receive credit toward that customer's annual universal system benefits charge for internal
19 expenditures and activities that qualify as a universal system benefits program expenditure and these
20 internal expenditures must include but not be limited to:

21 (i) expenditures that result in a reduction in the consumption of electrical energy in the customer's
22 facility; and

23 (ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the
24 acquisition or support of renewable energy or conservation-related activities; and

25 (c) customers making these expenditures must receive a credit against the customer's annual
26 universal system benefits charge, except that any of those amounts expended in a calendar year that
27 exceed that customer's universal system benefits charge for the calendar year must be used as a credit
28 against those charges in future years until the total amount of those expenditures has been credited against
29 that customer's universal system benefits charges.

30 ~~(13)(8)~~ A utility in the state of Montana may not be advantaged or disadvantaged in the competitive

1 ~~electricity supply market, including the consideration of the existence of universal system benefits programs~~
2 ~~and the comparable level of funding for those programs throughout the regions neighboring Montana.~~

3 ~~(14)(9)(8)~~ A public utility shall prepare and submit an annual summary report of the public utility's
4 activities relating to all universal system benefits programs to the commission and the transition advisory
5 committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary
6 reports of activities to the cooperative utility's respective local governing body, the statewide cooperative
7 utility office, and the transition advisory committee. The annual report must include, but is not limited to:

8 (a) the types of internal utility and customer programs being used to satisfy the provisions of
9 [sections 1 through 31];

10 (b) the level of funding for those programs relative to the annual funding requirements prescribed
11 in subsection (2); and

12 (c) any payments made to the statewide funds in the event that internal funding was below the
13 prescribed annual funding requirements.

14
15 **NEW SECTION. Section 23. Commission authority -- rulemaking authority.** (1) Beginning on the
16 effective date of a commission order regarding a public utility's transition plan, the commission shall
17 regulate the public utility's retail transmission and distribution services within the state of Montana, as
18 provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity
19 supply may be procured during the transition period by the distribution function of a public utility for those
20 customers that ~~do not have a choice of~~ **HAVE NOT CHOSEN AN** electricity supplier or for those customers
21 that have not yet been assigned an electricity supplier. During the transition period, those procurements
22 may include a cost-based contract from a supply affiliate or an unregulated division.

23 (2) If the transition period is extended for certain customers because **THE COMMISSION FINDS**
24 **THAT** workable competition in the electricity supply market does not exist, then the commission shall
25 **CONTINUE TO** regulate **THE PROVISION OF ELECTRICITY SUPPLY BY** distribution services providers in
26 accordance with [section 9 ~~(11)~~ 11].

27 (3) The commission shall decide if there is workable competition in the electricity supply market by
28 determining whether **COMPETITION IS** sufficient ~~price elasticity of demand exists in the electricity supply~~
29 ~~market~~ to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the
30 commission may not rely solely on market share estimates.

(4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to [section 24].

(5) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety and reliability.

(6) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with [sections 1 through 31], and on the public utility's transition plan.

(7) The commission shall certify that a cooperative utility has adopted a transition plan that complies with [sections 1 through 31]. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(8) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(9) In addition to promulgating rules expressly provided for in [sections 1 through 31], the commission may promulgate any other rules necessary to carry out the provision of [sections 1 through 31].

(10) [Sections 1 through 31] do not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with [sections 1 through 31]; or

(b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1 through 31].

NEW SECTION. Section 24. Licensing. (1) Except as provided in [section 20], an electricity supplier shall file an application with and obtain a license from the commission before offering electricity for sale to retail customers in the state of Montana.

(2) As a condition of licensing, an electricity supplier shall identify and describe its ~~business~~ activities and purposes and the ~~business~~ purposes of each of the electricity supplier's affiliates, IF ANY, including whether an affiliate that owns or operates distribution facilities offers customer choice through

1 open, fair, and nondiscriminatory access to the electricity supplier SUPPLIER'S or the electricity supplier's
2 affiliate's distribution facilities.

3 (3) The commission may require electricity suppliers that provide electricity supply service to small
4 customers to make a standard service offer that ensures that those customers have access to affordable
5 electricity.

6 (4) The commission may require:

7 (a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to
8 obtain those reserves; and

9 (b) a licensee to post a bond if SHOULD an electricity supplier ~~fails~~ FAIL to supply electricity or is
10 ~~not operating~~ LACK FINANCIAL INTEGRITY.

11 (5) An electricity supplier shall provide the commission and all distribution services providers with
12 copies of all license applications pursuant to subsection (2). Licensees shall update information and file
13 annual reports with the commission and all distribution services providers.

14 (6) License applications are effective 30 days after filing with the commission, unless the
15 commission rejects the application during that period. If the commission rejects a license application, the
16 commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome
17 deficiencies.

18 (7) Notwithstanding [sections 1 through 31], a cooperative utility is not required to apply for a
19 license from the commission to be an electricity supplier to customers ~~normally~~ served by that cooperative
20 utility in its ~~traditional~~ ELECTRIC FACILITIES service territory or to any customers ~~normally~~ served by
21 another cooperative utility subject to the consent of the other cooperative utility's local governing body.

22

23 NEW SECTION. Section 25. Penalties -- license revocation. (1) The commission may begin a
24 proceeding to ~~either impose a penalty or~~ revoke or suspend a license of an electricity supplier, IMPOSE A
25 PENALTY, OR BOTH, for just cause on the commission's own investigation or upon the complaint of an
26 affected party if it is established that the electricity supplier:

27 (a) intentionally provided false information to the commission;

28 (b) switched, or cause to be switched, the electricity supply for a customer without first obtaining
29 the customer's written permission; ~~or~~

30 (c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; OR

1 (D) COMMITTED FRAUD OR ENGAGED IN DECEPTIVE PRACTICES.

2 (2) Any person selling or offering to sell electricity in this state in violation of [sections 24, 27,]
3 and this section is subject to a fine of not less than \$100 or more than \$1,000 for the violation or a license
4 revocation or suspension. EACH DAY OF EACH VIOLATION CONSTITUTES A SEPARATE VIOLATION.

5 (3) The fine must be recovered in a civil action upon the complaint by the commission in any court
6 of competent jurisdiction.

7 (4) A license revocation proceeding under this section is a contested case proceeding pursuant to
8 the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

9
10 NEW SECTION. Section 26. Bill information -- customer nonpayment -- commission rulemaking.

11 (1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules
12 promulgated by the commission. ~~The electrical bill~~ ELECTRICAL BILLS must disclose but ~~is~~ ARE not limited
13 to the following:

14 (a) distribution and transmission charges;

15 (b) electricity supply charges;

16 (c) competitive transition charges; and

17 (d) universal system benefits charges.

18 (2) The commission shall promulgate rules establishing the procedures relating to how and when
19 an electricity supplier may discontinue service to a customer because of the customer's nonpayment and
20 the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that
21 are cooperative utilities.

22 (3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities
23 regarding:

24 (a) customer nonpayment and reconnection; and

25 (b) information contained in electrical bills to consumers.

26
27 NEW SECTION. Section 27. Unauthorized switching -- commission rulemaking. (1) An electricity
28 supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity
29 supplier for a customer without first obtaining the customer's written permission.

30 (2) The commission shall promulgate rules establishing procedures to prevent unauthorized

1 switching.

2

3 NEW SECTION. Section 28. Reciprocity. (1) Except as provided in [section 20], all electricity
4 suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable
5 opportunity to compete.

6 (2) A distribution services provider or the distribution services provider's affiliates may not use
7 another distribution services provider's facilities in the state of Montana to sell electricity to customers in
8 the state of Montana unless the first distribution services provider or the distribution services provider's
9 affiliates offers comparable and nondiscriminatory access to the distribution services provider's distribution
10 facilities.

11

12 NEW SECTION. Section 29. Transition advisory committee. (1) A transition advisory committee
13 on electric utility industry restructuring is created. The transition advisory committee is composed of ~~18~~
14 EIGHT VOTING members who are appointed as follows:

15 (a) The speaker of the house shall appoint ~~two~~ FOUR members from the house of representatives,
16 NOT MORE THAN TWO OF WHOM MAY BE FROM ONE POLITICAL PARTY.

17 (b) The president of the senate shall appoint ~~two~~ FOUR members from the senate, NOT MORE
18 THAN TWO OF WHOM MAY BE FROM ONE POLITICAL PARTY.

19 (2) THE FOLLOWING ENTITIES SHALL APPOINT NONVOTING ADVISORY REPRESENTATIVES TO
20 THE TRANSITION ADVISORY COMMITTEE:

21 ~~(a)(A)~~ The director of the department of environmental quality shall appoint one department
22 representative.

23 ~~(b)(B)~~ The legislative consumer council COUNSEL COMMITTEE shall appoint one representative.

24 ~~(c)(C)~~ ~~Two representatives~~ ONE REPRESENTATIVE of the cooperative utility industry ~~are~~ IS
25 appointed as designated by the Montana electrical cooperative association.

26 ~~(d)(D)~~ ~~Two representatives selected by the~~ THE public utilities in the state of Montana ~~are appointed~~
27 SHALL APPOINT ONE MEMBER.

28 ~~(e)(E)~~ ~~One representative of the~~ THE commission ~~is appointed~~ SHALL APPOINT ONE MEMBER.

29 ~~(f)(F)~~ The governor shall appoint the following NONVOTING committee members:

30 (i) one representative from the industrial community with an interest in the restructuring of the

1 electric utility industry;

2 (ii) one representative from the nonindustrial retail electric consumer sector;

3 (iii) one representative from organized labor;

4 (iv) one representative from the community comprising environmental and conservation interests;

5 (v) one representative of ~~FROM A~~ low-income consumers PROGRAM PROVIDER;

6 (vi) one representative of Montana's Indian tribes; and

7 (vii) one representative of the electric power market industry.

8 ~~(2)(3)~~ In case of a vacancy, a replacement must be selected in the manner of the original
9 appointment.

10 ~~(3)(4)~~ Legislative members are entitled to salary and expenses as provided in section 5-2-302.
11 ~~Other members serve without salary and without reimbursement of expenses.~~

12 ~~(4)(5)~~ The public service commission, legislative services division, and appropriate state agencies
13 shall provide staff assistance as requested by the committee.

14 ~~(5)(6)~~ Transition advisory committee members must be appointed within 60 days of [the effective
15 date of this act] to an initial term expiring on December 31, 1999. Subsequent terms must be for up to
16 2 years expiring on January 1 of odd-numbered years.

17 ~~(6)(7) The governor shall appoint a transition advisory committee presiding officer.~~ THE VOTING
18 MEMBERS SHALL SELECT A TRANSITION ADVISORY COMMITTEE PRESIDING OFFICER.

19 ~~(7)(8)~~ The transition advisory committee on electric utility industry restructuring must dissolve on
20 the earlier of either the date that full transition to retail competition is completed or December 31, 2004.

21 ~~(8)(9)~~ The transition advisory committee shall provide an annual report on the status of electric
22 utility restructuring on or before November 1 to the governor, the speaker of the house, the president of
23 the senate, and the commission AND SHALL PROVIDE QUARTERLY INTERIM SUMMARY REPORTS TO THE
24 MEMBERS OF THE LEGISLATURE THROUGH JANUARY 1, 1999.

25 ~~(9)(10)~~ The transition advisory committee shall meet AT LEAST quarterly or as often as is necessary
26 to conduct its business.

27 ~~(10)(11)~~ The transition advisory committee shall analyze and report on the transition to effective
28 competition in the competitive electricity supply market. The annual report made in the year 2000 must
29 evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include
30 legislative recommendations, if it appears appropriate, about the best means to further encourage the

development of customer choice and meaningful market access for the benefit of smaller customers. The annual report for the year 2000 must also address the need, if any, for additional consumer protection including protection from abusive or anticompetitive practices.

~~(11)~~(12) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

~~(12)~~(13) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

~~(13)~~(14) The transition advisory committee shall make recommendations to the governor, regarding the implementation of statewide universal system benefits and universal energy bill assistance funds, in time to allow for those funds to be created on or before January 1, 1999. This may include recommendations regarding the assignment of an existing government agency or private nonprofit entity as the fund administrator and administration guidelines for the funds including the means by which funds may be made available for use.

~~(14)~~(15) The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in [section 22] to coincide with the related activities of the region at that time.

~~(15)~~(16) On or before July 1, 2002, the transition advisory committee, in coordination with the commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs

1 have developed. These recommendations may also address how future reevaluations will be provided for,
2 if necessary.

3 ~~(16)~~(17) On or before November 1, 2001, the transition advisory committee shall collect information
4 to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers
5 outside of the state of Montana comparable to the opportunity provided pursuant to [sections 1 through
6 31] to utilities or their affiliates located outside the state of Montana. That information must be included
7 in the report to the 58th legislature.

8 ~~(17)~~(18) ON OR BEFORE NOVEMBER 1, 1998, THE TRANSITION ADVISORY COMMITTEE SHALL
9 MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE REGARDING THE PROVISION
10 OF LOW-INCOME ENERGY ASSISTANCE PROGRAMS IN MONTANA BY ALL ENERGY PROVIDERS.

11
12 NEW SECTION. Section 30. Tax revenue analysis. (1) The revenue oversight committee, as
13 provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously
14 regulated electricity suppliers that will enter the competitive market and report to the legislature annually
15 on how revenue to the state or local government is changed by restructuring and competition.

16 (2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative
17 changes, if any, to address the establishment of comparable state and local taxation burdens on all market
18 participants in the supply of electricity. Any legislation recommended by the revenue oversight committee
19 should place comparable state and local taxation burdens upon all market participants.

20
21 NEW SECTION. Section 31. Transition costs financing. (1) A utility may, after July 1, 1997, apply
22 to the commission for a determination that certain transition costs may be recovered through the issuance
23 of transition bonds. IF TRANSITION BONDS ARE ISSUED, COST SAVINGS ASSOCIATED WITH AND
24 RESULTING FROM THE BONDS MUST BENEFIT CUSTOMERS. After the issuance of a financing order, the
25 utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition
26 property or to cause the transition bonds to be issued, including the right to defer or postpone the sale,
27 assignment, transfer, pledge, or issuance. IF TRANSITION BONDS ARE NOT ISSUED WITHIN 4 YEARS OF
28 THE ISSUANCE OF THE FINANCING ORDER, THE FINANCING ORDER MUST TERMINATE. THE UTILITY
29 MAY APPLY FOR AN EXTENSION OR RENEWAL OF A FINANCING ORDER.

30 (2) (a) The commission may issue financing orders in accordance with this section to facilitate the

1 recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition
2 property. A financing order may be adopted only upon the application of a utility and may only become
3 effective in accordance with its terms after the utility files with the commission the utility's written consent
4 to all terms and conditions of the financing order. A financing order may specify how amounts collected
5 from a customer are allocated between fixed transition amounts and other charges.

6 (b) A financing order must include, without limitation, a procedure for the expeditious approval by
7 the commission of periodic adjustments to NONBYPASSABLE RATES AND CHARGES ASSOCIATED WITH
8 fixed transition amounts included in the order to ensure recovery of all transition costs and the costs of
9 capital associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs
10 and the acquisition of transition property including the costs of issuing, servicing, and retiring the transition
11 bonds contemplated by the financing order. THE ORDER MUST SET FORTH THE TERM OVER WHICH THE
12 TRANSITION BONDS ARE TO BE PAID, BUT THOSE TERMS MAY NOT EXCEED 20 YEARS. These
13 adjustments may not impose fixed transition amounts upon customer classes that were not subject to the
14 fixed transition amounts in the pertinent financing order.

15 (3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section
16 with respect to transition property that has been made the basis for the issuance of transition bonds AND
17 UPON THE ISSUANCE OF TRANSITION BONDS, the financing orders and the fixed transition amounts must
18 be irrevocable.

19 (b) ~~The~~ IF TRANSITION BONDS HAVE BEEN ISSUED, THE commission may not by rescinding,
20 altering, or amending the financing order or otherwise:

- 21 (i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering,
22 reimbursing, financing, or refinancing the transition costs and acquiring transition property;
23 (ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or
24 (iii) in any way reduce or impair the value of transition property either directly or indirectly by taking
25 fixed transition amounts into account when setting other rates for the utility.

26 (c) The TOTAL amount of ~~revenue arising with respect to~~ the transition property may not be subject
27 to reduction, impairment, postponement, or termination.

28 (d) Except as otherwise provided in this section, the state pledges and agrees with the assignees
29 and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed
30 transition amounts, transition property, financing orders, or any right under the ~~obligations~~ BONDS until the

1 ~~obligations~~ BONDS, together with the interest on the ~~obligations~~ BONDS, are fully met and discharged. THE
2 BOARD, AS AGENT FOR THE STATE, IS AUTHORIZED TO INCLUDE THIS PLEDGE AND UNDERTAKING
3 FOR THE STATE IN THESE ~~OBLIGATIONS~~ BONDS.

4 (e) Notwithstanding any other provision of this section, the commission shall approve those
5 adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition
6 costs that are the subject of the pertinent financing order and the costs of capital associated with the
7 recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property
8 including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing
9 order. The adjustments may not impose fixed transition amounts upon customer classes that were not
10 subject to the fixed transition amounts in the pertinent financing order.

11 (4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision
12 of the state if issued through the board and do not constitute a pledge of the full faith and credit of the
13 state or any of the state's political subdivisions if issued through the board. The financing orders are
14 payable solely from the funds provided under this section. The bonds and offering documents must contain
15 ON THEIR FACE a statement to the following effect:

16 ~~"Neither the full faith and credit nor the taxing power of the State of Montana is pledged to the~~
17 ~~payment of the principal of or interest on this security."~~ THIS BOND MAY NOT CONSTITUTE AN
18 INDEBTEDNESS OR A LOAN OF CREDIT OF THE STATE OF MONTANA OR ANY POLITICAL SUBDIVISION
19 OF THE STATE OF MONTANA WITHIN ANY CONSTITUTIONAL OR STATUTORY PROVISION. NEITHER
20 THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF MONTANA IS PLEDGED TO
21 THE PAYMENT OF THE PRINCIPAL OR INTEREST ON THIS BOND, AND NEITHER THE STATE OF
22 MONTANA NOR ANY POLITICAL SUBDIVISION OF THE STATE OF MONTANA IS OBLIGATED, DIRECTLY,
23 INDIRECTLY, OR CONTINGENTLY, TO LEVY OR TO PLEDGE ANY FORM OF TAXATION OR TO MAKE ANY
24 APPROPRIATION FOR THE PAYMENT OF THIS BOND. THIS BOND IS A LIMITED OBLIGATION OF THE
25 ISSUER, PAYABLE SOLELY OUT OF THE TRANSITION PROPERTY OR THE PROCEEDS OF THAT
26 PROPERTY SPECIFICALLY PLEDGED FOR ITS PAYMENT AND NOT OTHERWISE.

27 (b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate
28 the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any
29 appropriation for bond payment.

30 (5) The commission shall establish procedures for the expeditious processing of applications for

1 financing orders, including the approval or disapproval of applications within 120 days after a utility submits
2 a complete application. The commission shall provide in any financing order for a procedure for the
3 expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are
4 the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine
5 on each anniversary of the issuance of the financing order and at additional intervals as may be provided
6 for in the financing order whether the adjustments are required and shall provide for the adjustments, if
7 required, to be approved within 60 days of each anniversary of the issuance of the financing order or of
8 each additional interval provided for in the financing order.

9 (6) Fixed transition amounts become transition property when and to the extent that a financing
10 order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and
11 the transition property must thereafter continuously exist as property for all purposes with all of the rights
12 and privileges of [sections 1 through 31] for the period and to the extent provided in the financing order
13 or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages
14 on the transition bonds.

15 (7) Transition bonds may be issued upon commission approval in the pertinent financing order.
16 Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility,
17 other than the transition property as specified in the pertinent financing order.

18 (8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition
19 property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest
20 in that transition property to one or more assignees in connection with the issuance of transition bonds to
21 the extent approved in the pertinent financing order.

22 (b) A utility or an assignee may pledge transition property as collateral for transition bonds to the
23 extent approved in the pertinent financing order and may provide for a security interest in the transition
24 property as provided in this section.

25 (c) Transition property may be sold, assigned, or transferred for the benefit of:

26 (i) transition bondholders in connection with the exercise of remedies upon a default; or

27 (ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this
28 section.

29 (9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged
30 as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will,

1 subject to the utility's rights under subsection (18):

2 (i) continue to operate the utility's system and to provide service to the utility's customers;

3 (ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the
4 assignee; and

5 (iii) account for and remit these amounts to or for the account of the assignee.

6 (b) Contracting with the assignee in accordance with the commission's authorization may not impair
7 or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute
8 assignment or transfer, or a grant of a security interest, as applicable.

9 (10) Notwithstanding any other provision of law, any provision under this section or under a
10 financing order requiring that the commission take or refrain from taking action with respect to the subject
11 matter of a financing order binds the commission and any successor commission or agency exercising
12 functions similar to the commission, and the commission or any successor commission or agency may not
13 rescind, alter, or amend that requirement in a financing order.

14 (11) A pledge or any other security interest in transition property is valid, is enforceable against the
15 pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties
16 holding security interests in the transition property perfected in the manner described in this section, and
17 attaches only when all of the following have taken place:

18 (a) the commission has issued the financing order authorizing the fixed transition amounts included
19 in the transition property;

20 (b) value has been given by the pledgees of the transition property; and

21 (c) the pledgor has signed a security agreement or other financing-related agreement covering the
22 transition property.

23 (12) (a) A valid and enforceable security interest in transition property is perfected only when it has
24 attached and when a financing statement has been filed with the ~~commission~~ SECRETARY OF STATE in
25 accordance with procedures that the ~~commission~~ SECRETARY OF STATE may establish. The financing
26 statement must name the pledgor of the transition property as debtor and identify the transition property.

27 (b) Any description of the transition property is sufficient if the description refers to the financing
28 order creating the transition property.

29 (c) The commission may require other filings with respect to the security interest in accordance with
30 procedures the commission may establish, except that these filings may not affect the perfection of the

1 security interest.

2 (13) A perfected security interest in transition property is a continuously perfected security interest
3 in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or
4 proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection.
5 Transition property constitutes property for all purposes, including for contracts securing transition bonds,
6 whether or not the revenue and proceeds arising with respect to the transition property have accrued.

7 (14) (a) Subject to the terms of the security agreement covering the transition property and the
8 rights of any third parties holding security interests in the transition property perfected in the manner
9 described in this section, the validity and relative priority of a security interest created under this section
10 is not defeated or adversely affected by:

11 (i) the commingling of revenue arising with respect to the transition property with other funds of
12 the utility that is the pledgor or transferor of the transition property; or

13 (ii) any security interest of any third party in a deposit account of that utility perfected under Title
14 30, chapter 9, part 3, into which the revenue is deposited.

15 (b) Subject to the terms of the security agreement, upon compliance with the requirements of this
16 section, a pledgee of the transition property has a perfected security interest in all cash and deposit
17 accounts of the utility in which revenue arising with respect to the transition property has been commingled
18 with other funds, but the perfected security interest must be limited to an amount no greater than the
19 amount of the revenue with respect to the transition property received by the utility within 12 months
20 before any default under the security agreement or the institution of insolvency proceedings by or against
21 the utility, less payments from the revenue to the pledgees during that 12-month period.

22 (15) (a) If a default occurs under the security agreement covering the transition property, a pledgee
23 of the transition property, subject to the terms of the security agreement, has all rights and remedies of a
24 secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise
25 enforce the pledgee's security interest in the transition property, subject to the rights of any third parties
26 holding prior security interests in the transition property perfected in the manner provided in this section.

27 (b) The commission may require in the financing order creating the transition property that in the
28 event of default by the utility in payment of revenue arising with respect to the transition property, the
29 commission and any successor to the commission, upon the application by a pledgee or assignee of the
30 transition property and without limiting any other remedies available to the pledgees or transferees by

1 reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds
2 of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy,
3 reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or
4 transferor of the transition property.

5 (c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and
6 arrearages on the transition bonds and other costs arising under the security agreement must be remitted
7 to the debtor or to the pledgor as provided in the security agreement.

8 (16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another
9 assignee that the parties have in the governing documentation expressly stated to be a sale or other
10 absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute
11 transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other
12 financing of the transition property, other than for federal and state income and franchise tax purposes.

13 (b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by
14 the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or
15 negate the characterization of any transfer as a true sale, other than for federal and state income and
16 franchise tax purposes.

17 (c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must
18 be treated as a pledge or other financing unless the governing documentation ~~or~~ OF transfer specifically
19 states that THE transfer is intended to be treated otherwise. The characterization of the transfer as a true
20 sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the
21 characterization of the transfer as a pledge or other financing for federal tax purposes.

22 (17) A sale, assignment, or other transfer of transition property may only be considered perfected
23 as against any third person, including any judicial lien creditor, when both of the following have taken place:

24 (a) the financing order authorizing the fixed transition amounts included in the transition property
25 has become effective in accordance with subsection (2); and

26 (b) an assignment of the transition property, in writing, has been executed and delivered to the
27 transferee.

28 (18) (a) As between bona fide assignees of the same right for value without notice, the assignee
29 first filing a financing statement with the ~~commission~~ SECRETARY OF STATE in accordance with
30 procedures that the ~~commission~~ SECRETARY OF STATE may establish has priority. The financing

statement must name the assignor of the transition property as debtor and must identify the transition property. Any description of the transition property is sufficient if the description refers to the financing order creating the transition property. The commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings may not affect the perfection of the transfer.

(b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged to secure transition bonds.

(19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in the definition of transition property, whether before or after the issuance of a financing order, does not constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a financing order, including the interest pertaining to a financing order, along with the associated transition property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or interest other than in the order and the transition property arising from the order.

(20) The lien under this section is enforceable against the pledgor and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition property previously perfected in the manner described in this section if value has been given by the purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the associated transition property, whether or not revenue has been accrued. Transition property constitutes property for the purposes of contracts securing transition bonds, whether or not the related revenue has accrued. The lien created under this section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the transition property, to the fixed transition costs, and to the financing order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this section is not defeated or adversely affected by changes to the financing order or to the fixed transition amounts payable by any customer.

(21) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this section and may provide that transfers of transition property to an assignee be filed in accordance with the same system.

(22) Any sale, assignment, or other transfer of transition property or any pledge of transition property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

(23) The transition bonds issued under [sections 1 through 31] are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with the state securities commissioner.

(24) The granting, perfection, and priority of security interests with respect to transition property and the proceeds thereof are governed by this section rather than Title 30, chapter 9.

(25) UPON THE PAYMENT IN FULL OF TRANSITION BOND PRINCIPAL AND INTEREST, THE UTILITY SHALL DISCONTINUE CHARGING AND COLLECTING THE COMPETITIVE TRANSITION CHARGE ASSOCIATED WITH THAT PORTION OF THE UTILITY'S APPROVED TRANSITION COSTS.

(26) THE COMMISSION MAY, BY ORDER OR RULE AND SUBJECT TO TERMS AND CONDITIONS THAT IT MAY PRESCRIBE, EXEMPT ANY SECURITY OR CLASS OF SECURITIES FOR WHICH AN APPLICATION IS REQUIRED UNDER THIS TITLE OR ANY PUBLIC UTILITY OR CLASS OF PUBLIC UTILITY FROM THE PROVISIONS OF THIS TITLE IF IT FINDS THAT THE APPLICATION OF THIS TITLE TO THE SECURITY, CLASS OF SECURITY, PUBLIC UTILITY, OR CLASS OF PUBLIC UTILITY IS NOT REQUIRED BY THE PUBLIC INTEREST.

Section 32. Section 15-6-137, MCA, is amended to read:

"15-6-137. Class seven property -- description -- taxable percentage. (1) Class seven property includes:

(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(b) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

(c) electric transformers and meters; electric light and power substation machinery; natural gas

measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile.

(3) Class seven property is taxed at 8% of its market value."

Section 33. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property -- description -- taxable percentage. (1) Class nine property includes:

(a) centrally assessed electric power companies' allocations, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities ~~+, not including rural electric cooperatives~~; However, properties of rural electric cooperatives COOPERATIVES' PROPERTY USED FOR THE SOLE PURPOSE OF serving CUSTOMERS REPRESENTING less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property are IS included. FOR PURPOSES OF THIS SUBSECTION (1)(A), "PROPERTY USED FOR THE SOLE PURPOSE" DOES NOT INCLUDE A HEADQUARTERS, OFFICE, SHOP, OR OTHER SIMILAR FACILITY.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven;

(iv) railroad transportation property included in class twelve; and

(v) airline transportation property included in class twelve.

(2) Class nine property is taxed at 12% of market value."

Section 34. Section 69-5-101, MCA, is amended to read:

"69-5-101. **Short title.** This part ~~shall be~~ is known and may be cited as the "Territorial Integrity Act of 1971"."

Section 35. Section 69-5-102, MCA, is amended to read:

"69-5-102. **Definitions.** When used in this part, the following definitions apply:

(1) ~~"Commercial premises" means the premises where the business of selling, warehousing, or distributing a commodity or other business activity is carried on or professional or other services are rendered.~~ "Agreement" means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.

(2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted thereunder to do business in Montana.

(3) "Electric supplier facilities provider" means any electrical utility and any electric cooperative that provides electric service facilities to the public.

(4) "Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.

~~(4)(5)~~ (5) "Electric utility" means a person, firm, or corporation other than an electric cooperative ~~which furnishes electrical~~ that provides electric service facilities to the public.

~~(5) "Industrial premises" means the premises where an industrial activity is carried on, including but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping, cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other extractive, fabricating, or processing activities.~~

(6) "Line" means any electric supply conductor ~~operating at a nominal voltage level of 34,500 volts or less, measured phase to phase.~~

(7) "Premises" means a building, residence, structure, or facility to which ~~electricity is being electric service facilities are provided or is are to be furnished; provided, that installed; however,~~ two or more buildings, structures, or facilities ~~which that~~ are located on one tract or contiguous tracts of land and that are ~~utilized~~ used by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes ~~shall~~ must together constitute one premises, except that any ~~such~~

1 building, structure, or facility, other than a trailer court, ~~shall~~ may not, together with any other building,
2 structure, or facility, constitute one premises if the electric service to it is separately metered and the
3 charges for ~~such~~ that service are calculated independently of charges for service to any other building,
4 structure, or facility.

5 (8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or
6 a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18."

8 **Section 36.** Section 69-5-104, MCA, is amended to read:

9 **"69-5-104. Continuation of ~~service~~ electric service facilities to existing consumers.** ~~Every~~ Each
10 ~~electric supplier service facilities provider~~ shall have ~~has~~ the right to ~~serve~~ provide electric service facilities
11 to all premises being served by it or to which any of its facilities are attached on February 1, 1971 [the
12 effective date of this act]."

14 **Section 37.** Section 69-5-105, MCA, is amended to read:

15 **"69-5-105. Service to new consumers.** (1) Subject to ~~69-5-106~~ this part, the electric ~~supplier~~
16 facilities provider having a line nearest the premises, as measured in accordance with subsection (2), shall
17 ~~serve~~ provide electric service facilities to the premises initially requiring service after February 1, 1971 [the
18 effective date of this act], which creates a rebuttable presumption that the nearest line is the least-cost
19 electric service facility to the new customer. However, a customer or another electric facilities provider
20 may rebut the presumption, and another electric facilities provider may provide the electric service facilities
21 if it can do so at less cost.

22 (2) All measurements under this part ~~shall~~ must be made on the shortest straight line ~~which~~ that
23 can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises.
24 ~~Construction power for premises to be constructed shall be supplied by the electric supplier having the right~~
25 ~~to serve the completed premises.~~

26 (3) If the electric facilities providers are unable to reach agreement as to which electric facilities
27 provider can provide electric service facilities at least cost, an independent consultant engineer agreeable
28 to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on
29 a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction,
30 as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the

1 consumer at the least cost. The cost of those engineering services must be paid equally by the electric
2 facilities providers involved."

3
4 **Section 38.** Section 69-5-106, MCA, is amended to read:

5 **"69-5-106. Service Electric service facilities to industrial or commercial premises large customers.**

6 (1) An electric utility has the right to furnish electric service facilities to any ~~industrial or commercial~~
7 premises if the estimated connected load for full plant operation at ~~such industrial or commercial~~ the
8 premises will be 400 kilowatts or larger within 2 years from the date of initial service ~~provided such and~~
9 if the electric utility can extend its lines facilities to ~~such industrial or commercial~~ the premises at less cost
10 to the electric utility ~~or the industrial or commercial customer~~ than the electric cooperative cost. The
11 estimated connected load ~~shall~~ must be determined from the plans and specifications prepared for
12 construction of the premises or, if ~~such an~~ estimate is not available, ~~shall~~ must be determined by agreement
13 of the electric ~~supplier~~ facilities provider and the customer. The fact that the actual connected load after
14 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric
15 ~~supplier~~ facilities provider initially providing electric service facilities to continue to provide electric service
16 facilities to ~~such the~~ premises.

17 (2) An independent consultant engineer agreeable to both electric ~~suppliers~~ facilities providers or,
18 in the event of failure of the electric ~~suppliers~~ facilities providers to agree on a consultant engineer, an
19 independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110,
20 shall determine which electric ~~supplier~~ facilities provider can extend its ~~lines to the consumer~~ facilities at
21 the least cost to the utility. The cost of ~~such those~~ engineering services ~~shall~~ must be paid equally by the
22 electric ~~suppliers~~ facilities providers involved.

23 ~~(3) No premises other than another such commercial or industrial premises shall be served from~~
24 ~~a line constructed under this section."~~

25
26 **Section 39.** Section 69-5-107, MCA, is amended to read:

27 **"69-5-107. Service to property owned by electric supplier Customer-owned facilities.** Nothing in
28 ~~69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any~~
29 ~~property owned by the electric supplier. This part may not limit a customer's right to construct, own, or~~
30 operate electric service facilities for the customer's own use, and construction, ownership, or use may not

1 cause the customer to be considered a utility. A customer may not duplicate existing electric service
2 facilities."

3
4 **Section 40.** Section 69-5-108, MCA, is amended to read:

5 **"69-5-108. Agreements between electric suppliers as to service areas facilities providers.**
6 ~~Notwithstanding the provisions of 69-5-103 through 69-5-109, an electric supplier may furnish electric~~
7 ~~service to any consumer at any premises being served by another electric supplier upon written agreement~~
8 ~~of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant~~
9 ~~to this part, upon written agreement of the affected electric suppliers. Utilities may enter into agreements~~
10 that identify the geographical area to be exclusively served by each electric facilities provider that is party
11 to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the
12 commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and
13 all customers, except those provided for in 69-5-106."

14
15 **Section 41.** Section 69-5-109, MCA, is amended to read:

16 **"69-5-109. Special provisions for annexed areas. With respect to service in areas which are**
17 ~~annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers~~
18 ~~have rights and are subject to restrictions as follows:~~

19 ~~(1) Every electric supplier has the right to serve all premises being served by it on the date of~~
20 ~~annexation.~~

21 ~~(2) An electric cooperative does not have the right to serve any premises initially requiring service~~
22 ~~on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated~~
23 ~~municipalities in which 95% or more of the premises were served by an electric cooperative on February~~
24 ~~1, 1971. (1) Electric facilities providers providing electric service facilities in or near areas that are~~
25 incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since
26 1985 or having existing municipal planning zones on [the effective date of this act] shall enter into
27 agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit
28 the agreements to the commission for approval, pursuant to this part.

29 (2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater.
30 Agreements must be based on the location of facilities in place on [the effective date of this act].

1 (3) If electric facilities providers have failed to negotiate agreements within 1 year from the
2 [effective date of this act], the commission shall divide the annexed and planning zone areas into exclusive
3 service territories, using the considerations pursuant to [section 44].

4 (4) Until agreements are final, electric service facilities to new customers will be provided pursuant
5 to 69-5-105."

6
7 **Section 42.** Section 69-5-110, MCA, is amended to read:

8 **"69-5-110. Jurisdiction of district courts over disputes.** The district courts of the county or
9 counties within which the premises or lines involved in any dispute are located ~~shall~~ have jurisdiction under
10 this part over all electric ~~suppliers~~ facilities providers subject to ~~the provisions thereof~~ this part."

11
12 **Section 43.** Section 69-5-111, MCA, is amended to read:

13 **"69-5-111. Judicial remedies.** (1) Whenever ~~it shall appear that any an~~ an electric supplier facilities
14 provider is failing or omitting or about to fail or omit to do anything required of it by this part or is doing
15 or is about to do anything or to permit anything to be done contrary to or in violation of this part, ~~any the~~
16 electric supplier facilities provider affected ~~thereby shall have the right to~~ may file a complaint in the district
17 court ~~briefly~~ setting forth the acts or omissions complained of and requesting an injunction.

18 (2) If an affidavit showing that grounds exist ~~therefor~~ that an electric facilities provider is in
19 violation of this part is filed with the complaint, a temporary restraining order ~~shall~~ must be issued without
20 notice. A copy of the temporary restraining order, complaint, and affidavit ~~shall~~ must be served upon the
21 defendant, together with an order to show cause why the temporary restraining order should not be made
22 permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to
23 show cause must be held at a date specified ~~therein in the order, which shall~~ and may not be more than
24 10 days after service ~~thereof of the order~~ and ~~shall~~ must take precedence over all matters pending before
25 the district court. A judgment making the injunction permanent or dissolving the temporary restraining order
26 ~~therefore that was~~ issued and dismissing the complaint must be made ~~not later than~~ before 10 days after
27 the hearing on the order to show cause.

28 (3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice
29 of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within
30 20 days ~~thereafter~~ after filing the notice of appeal and ~~shall~~ must take precedence over all matters pending

1 before the supreme court of Montana."

2

3 NEW SECTION. Section 44. Commission jurisdiction over agreements. (1) All agreements between
4 electric facilities providers must be submitted to the commission for approval. Each agreement must clearly
5 identify the geographical area to be served by each electric facilities provider. The submission must include:

6 (a) a map and a written description of the area; AND

7 (b) the terms and conditions pertaining to the implementation of the agreement;

8 (2) WHENEVER AN AGREEMENT INVOLVES THE EXCHANGE OR TRANSFER OF CUSTOMERS
9 WITHIN SERVICE TERRITORIES, THE FOLLOWING MUST ALSO BE INCLUDED WITH THE AGREEMENT
10 SUBMISSION:

11 ~~(a)~~ (A) the number and class of customers to be transferred;

12 ~~(b)~~ (B) assurance that the affected customers have been contacted and have received a written
13 explanation of the difference in rates; and

14 ~~(c)~~ (C) information with respect to the degree of acceptance by affected customers, such as the
15 number in favor of and those opposed to the transfer.

16 ~~(2)~~ (3) In approving agreements, the commission shall consider but not be limited to consideration
17 of:

18 (a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the
19 reliability of electric service to the existing or future ratepayers of any electric facilities provider party of
20 the agreement; and

21 (b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic
22 duplication of electric service facilities.

23 ~~(3)~~ (4) An agreement approved by the commission is valid and enforceable, and except as provided
24 in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into
25 an exclusive territory.

26 ~~(4)~~ (5) The commission shall state its findings and conclusions for approving or disapproving an
27 agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities
28 providers submitting the agreement to the commission shall act according to the agreement until a decision
29 is rendered.

30 ~~(5)~~ (6) Upon approval of the agreement, any modification, changes, or corrections to this agreement

1 must be approved by the commission.

2 ~~(6)(7)~~ The commission may promulgate rules to administer this part consistent with the
3 requirements of this part.

4
5 ~~NEW SECTION. SECTION 45. FUNDING FOR TRANSITION ADVISORY COMMITTEE. (1) THERE~~
6 ~~IS AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO WHICH ALL FEES COLLECTED UNDER~~
7 ~~[SECTION 46] AND THIS SECTION MUST BE DEPOSITED AND FROM WHICH ALL APPROPRIATIONS TO~~
8 ~~THE LEGISLATIVE SERVICES DIVISION FOR THE ACTIVITIES OF THE TRANSITION ADVISORY~~
9 ~~COMMITTEE MUST BE PAID. AN APPROPRIATION TO THE LEGISLATIVE SERVICES DIVISION FOR THE~~
10 ~~ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE MAY CONSIST OF A BASE APPROPRIATION~~
11 ~~FOR REGULAR OPERATING EXPENSES.~~

12 ~~(2) IN ADDITION TO ALL OTHER LICENSES, FEES, AND TAXES IMPOSED BY LAW, ALL ELECTRIC~~
13 ~~UTILITY COMPANIES SHALL:~~

14 ~~(A) WITHIN 30 DAYS AFTER THE CLOSE OF EACH CALENDAR QUARTER, FILE WITH THE~~
15 ~~DEPARTMENT OF PUBLIC SERVICE REGULATION AND THE DEPARTMENT OF REVENUE A STATEMENT,~~
16 ~~IN A FORM THAT THE COMMISSION AND DEPARTMENT OF REVENUE MAY DETERMINE, SHOWING THE~~
17 ~~GROSS OPERATING REVENUE FROM ALL ACTIVITIES BY THE COMMISSION WITHIN THE STATE FOR~~
18 ~~THAT CALENDAR QUARTER OF OPERATION OR PORTION OF A QUARTER, SEPARATELY STATING~~
19 ~~GROSS REVENUE FROM SALES TO OTHER COMPANIES FOR RESALE; AND~~

20 ~~(B) AT THAT TIME PAY TO THE DEPARTMENT OF REVENUE A FEE BASED ON A PERCENTAGE~~
21 ~~OF THE GROSS OPERATING REVENUE REPORTED, AS DETERMINED BY THE DEPARTMENT OF REVENUE~~
22 ~~UNDER [SECTION 46].~~

23 ~~(3) UNLESS THE DEPARTMENT OF REVENUE REQUIRES OTHERWISE, A STATEMENT FILED~~
24 ~~PURSUANT TO 69-1-223(2)(A) MEETS THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION.~~

25 ~~(4) THE AMOUNT OF MONEY THAT MAY BE RAISED BY THE FEE ON THE ELECTRIC UTILITY~~
26 ~~COMPANIES DURING A FISCAL YEAR MAY NOT BE INCREASED, EXCEPT AS PROVIDED IN [SECTION~~
27 ~~46], FROM THE AMOUNT APPROPRIATED, INCLUDING BOTH BASE AND CONTINGENCY~~
28 ~~APPROPRIATIONS, BY THE LEGISLATURE FOR THAT FISCAL YEAR. ANY ADDITIONAL MONEY REQUIRED~~
29 ~~FOR OPERATION OF THE TRANSITION ADVISORY COMMITTEE MUST BE OBTAINED FROM OTHER~~
30 ~~SOURCES IN A MANNER AUTHORIZED BY THE LEGISLATURE.~~

~~(5) AS USED IN [SECTION 46] AND THIS SECTION, "ELECTRIC UTILITY COMPANY" HAS THE SAME MEANING AS "ELECTRIC FACILITIES PROVIDER" AS DEFINED IN 69-5-102.~~

~~NEW SECTION. SECTION 46. DETERMINATION OF FEE FOR ACTIVITIES OF TRANSITION ADVISORY COMMITTEE -- FAILURE TO PAY -- PENALTY -- STATUTE OF LIMITATIONS. (1) ON OR BEFORE JUNE 30 IN EACH YEAR, THE DEPARTMENT OF REVENUE SHALL:~~

~~(A) DETERMINE THE TOTAL GROSS OPERATING REVENUE GENERATED BY ALL ACTIVITIES WITHIN THIS STATE FOR ALL ELECTRIC UTILITY COMPANIES FOR THE PREVIOUS FISCAL YEAR;~~

~~(B) COMPUTE THE PERCENTAGE, SUBJECT TO REVISION AS PROVIDED IN SUBSECTION (2), OF THE AMOUNT DETERMINED IN SUBSECTION (1)(A) THAT WILL PRODUCE AN AMOUNT EQUAL TO THE APPROPRIATION TO THE LEGISLATIVE SERVICES DIVISION, EXCEPT THAT AN ELECTRIC UTILITY COMPANY OWNED AND OPERATED BY ANY MUNICIPAL CORPORATION WITHIN THIS STATE MAY NOT BE REQUIRED TO PAY A SUM IN EXCESS OF 0.06 OF 1% OF ITS GROSS OPERATING REVENUE;~~

~~(C) ADJUST THE PERCENTAGE MULTIPLIER COMPUTED IN SUBSECTION (1)(B) TO ENSURE THAT SUFFICIENT FUNDS ARE GENERATED TO MEET THE APPROPRIATION AND THAT EXCESS FUNDS ARE NOT GENERATED OR RETAINED; AND~~

~~(D) GIVE NOTICE BY MAIL TO EACH ELECTRIC UTILITY COMPANY OF THE PERCENTAGE TO BE APPLIED TO THE GROSS OPERATING REVENUE TO DETERMINE THE AMOUNT OF THE FEE TO BE PAID.~~

~~(2) (A) THE DEPARTMENT OF REVENUE SHALL ADJUST THE PERCENTAGE MULTIPLIER IF THE DEPARTMENT CONSIDERS A CHANGE NECESSARY TO MEET OR TO NOT EXCEED THE AMOUNT TO BE RAISED BY THE FEE BECAUSE OF:~~

~~(i) FLUCTUATIONS IN THE ACTUAL GROSS OPERATING REVENUE SUBJECT TO THE FEE; OR~~

~~(ii) SUBMISSION AND APPROVAL OF A BUDGET AMENDMENT AUTHORIZING THE SPENDING OF MONEY FROM A CONTINGENCY APPROPRIATION INCLUDED IN THE APPROPRIATION FOR THE LEGISLATIVE SERVICES DIVISION IN SUPPORT OF THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE AND AUTHORIZED TO BE RAISED BY MEANS OF THE FEE.~~

~~(B) ADJUSTMENTS OF THE PERCENTAGE MULTIPLIER ARE SUBJECT TO THE EXCEPTION PROVIDED IN SUBSECTION (1)(B) FOR MUNICIPALLY OWNED AND OPERATED ELECTRIC UTILITY COMPANIES.~~

~~(C) ELECTRIC UTILITY COMPANIES MUST BE GIVEN AT LEAST 30 DAYS' NOTICE OF ANY~~

CHANGE IN THE PERCENTAGE MULTIPLIER.

(D) ANY CHANGE IN THE PERCENTAGE MULTIPLIER IS EFFECTIVE AT THE BEGINNING OF THE NEXT CALENDAR QUARTER.

(3) IN THE EVENT THAT THE FEE CHARGED IN 1 YEAR IS IN EXCESS OF THE AMOUNT ACTUALLY EXPENDED IN THAT YEAR, THE EXCESS MUST BE DEDUCTED FROM THE AMOUNT REQUIRED TO BE RAISED BY THE FEE FOR THE NEXT YEAR BEFORE THE DETERMINATION REQUIRED BY SUBSECTION (1) IS MADE. MONEY REMAINING UNSPENT AT THE CLOSE OF THE FISCAL YEAR MUST BE USED TO REDUCE THE PERCENTAGE CALCULATED UNDER THIS SECTION IN THE SUBSEQUENT FISCAL YEAR.

(4) ALL FEES PAID BY AN ELECTRIC UTILITY COMPANY PURSUANT TO THIS SECTION ARE IMMEDIATELY RECOVERABLE BY THE ELECTRIC UTILITY COMPANY IN ITS RATES AND CHARGES, WITHIN 30 DAYS AFTER THE ISSUANCE BY THE DEPARTMENT OF REVENUE OF THE NOTICE REQUIRED BY SUBSECTION (1). THE COMMISSION SHALL BY SEPARATE ORDER AUTHORIZE EACH ELECTRIC UTILITY COMPANY TO FULLY RECOVER IN ITS RATES AND CHARGES, ON AN ANNUAL BASIS, THE FEES LEVIED BY THIS SECTION.

(5) (A) IF AN ELECTRIC UTILITY COMPANY FAILS, NEGLECTS, OR REFUSES TO FILE A STATEMENT OR TO PAY THE FEE REQUIRED BY [SECTION 45] OR THIS SECTION, THE DEPARTMENT OF REVENUE SHALL COLLECT THE FEE IN THE SAME MANNER AS THE FEE FOR THE OFFICE OF THE LEGISLATIVE CONSUMER COUNSEL IS COLLECTED IN 69-1-225 THROUGH 69-1-230.

(B) THE PENALTY FOR FAILURE TO PAY THE FEE IMPOSED UNDER [SECTION 45] AND THIS SECTION IS THE SAME AS THE PENALTY UNDER 69-1-226.

(C) AN OVERPAYMENT OF THE FEE MUST BE PROCESSED IN THE SAME MANNER AS AN OVERPAYMENT IS PROCESSED UNDER 69-1-228.

(D) THE STATUTE OF LIMITATIONS FOR A DEFICIENCY ASSESSMENT IS THE SAME AS PROVIDED IN 69-1-230.

NEW SECTION. SECTION 45. APPROPRIATION. THERE IS APPROPRIATED FROM THE FEES COLLECTED UNDER [SECTIONS 45 AND 46] TO THE LEGISLATIVE SERVICES DIVISION \$76,000 FOR THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING. THIS IS A BIENNIAL APPROPRIATION. (1) THE LEGISLATIVE SERVICES DIVISION

1 MAY ACCEPT GIFTS, GRANTS, OR OTHER DONATIONS FOR THE PURPOSE OF OFFSETTING THE COSTS
2 OF CONDUCTING THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE UNDER [SECTION 29]
3 OR THE STUDY REQUIRED IN [SECTION 30].

4 (2) A GIFT, GRANT, OR OTHER DONATION MADE BY A PUBLIC UTILITY, AS DEFINED IN
5 69-3-101(1)(A), (1)(C), OR (1)(D), IS A COST THAT IS NONRECOVERABLE FROM RATEPAYERS AND
6 MUST BE BORNE 100% BY THE SHAREHOLDERS OF THE COMPANY MAKING THE GIFT, GRANT, OR
7 DONATION.

8 (3) THE LEGISLATIVE SERVICES DIVISION IS APPROPRIATED UP TO \$200,000 OF ANY GIFTS,
9 GRANTS, OR OTHER DONATIONS RECEIVED UNDER THIS SECTION, AND THE APPROPRIATION IS A
10 BIENNIAL APPROPRIATION.

11 (4) IF THE AMOUNT OF GIFTS, GRANTS, OR DONATIONS EXCEEDS THE AMOUNT
12 APPROPRIATED UNDER SUBSECTION (3), THE EXCESS MUST BE REFUNDED TO THE DONORS IN THE
13 RATIO OF THEIR RESPECTIVE GIFT, GRANT, OR DONATION TO THE TOTAL GIFTS, GRANTS, AND
14 DONATIONS RECEIVED.

15 (5) IF THE AMOUNT OF THE GIFTS, GRANTS, AND DONATIONS EXPENDED FOR CONDUCTING
16 THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE UNDER [SECTION 29] OR THE STUDY
17 REQUIRED IN [SECTION 30] IS LESS THAN THE AMOUNT RECEIVED AS GIFTS, GRANTS, OR
18 DONATIONS, THE EXCESS MUST BE REFUNDED TO THE DONORS IN THE RATIO OF THEIR RESPECTIVE
19 GIFT, GRANT, OR DONATION TO THE TOTAL GIFTS, GRANTS, AND DONATIONS RECEIVED.

20
21 NEW SECTION. Section 46. Repealer. Section 69-5-103, MCA, is repealed.
22

23 NEW SECTION. Section 47. Saving clause. [This act] does not affect rights and duties that
24 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
25 act].
26

27 NEW SECTION. Section 48. Severability. If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
29 applications, the part remains in effect in all valid applications that are severable from the invalid
30 applications.

1 NEW SECTION. Section 49. Codification instructions. (1) [Sections 1 through 31, 45, AND 46]
2 are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections
3 1 through 31, 45, AND 46].

4 (2) [Section 44] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the
5 provisions of Title 69, chapter 5, part 1, apply to [section 44].

7 **NEW SECTION.** **Section 50. Effective date.** [This act] is effective on passage and approval.

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